Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1996

In re: Ahmad Ali Massoud Ansari,
Debtor,

AHMAD ALI MASSOUD ANSARI,
Petitioner,

v.

REZA PAHLAVI,
MEDINA DEVELOPMENT COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTION PRESENTED

This petition presents an important federal question, whether the federal courts misapplied the Virginia principles of collateral estoppel in holding that the Virginia judgment debt owed by Petitioner/Ansari was nondischargeable in bankruptcy.

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Opinions Below

The findings of fact and conclusions of law of the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, are reprinted in the Appendix. App. at 22-35. The affirmance of the United States District Court for the Eastern District of Virginia, Alexandria Division, is reprinted in the Appendix. App. at 14-21. The opinion and judgment of the United States Court of Appeals for the Fourth Circuit, Pahlavi v. Ansari (In re Ansari), 113 F.3d 17 (4th Cir. 1997), is reprinted in Appendix. App. at 1-13.

Statement of Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit were rendered on May 8, 1997. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Statute Involved

11 U.S.C. § 523(a)(4) provides as follows:

> A discharge under section 7271141.1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-
> ...
> (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]

Statement of the Case

Petitioner Ahmad Ali Massoud Ansari ("Ansari") filed his voluntary petition under Chapter 7 of the bankruptcy code on March 24, 1993. On June 25, 1993, Respondents filed their Complaint Objecting To Discharge And To Determine Dischargeability Of Debts (the "Complaint"). The district court had original subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1334(a), and it automatically referred this case to the bankruptcy court pursuant to 28 U.S.C. § 157(a) and its own standing order.

After Ansari filed his Answer denying the substantive allegations of the Complaint, Respondents filed a Motion For Partial Summary Judgment, seeking a declaration that Ansari's Virginia judgment debt to them was nondischargeable on grounds of, inter alia, collateral estoppel. The bankruptcy court entered its Order granting the summary judgment on February 28, 1994, ruling that the compensatory damages portion of the judgment debt was nondischargeable for Ansari's defalcation while acting in a fiduciary capacity under 11 U.S.C. § 523(a)(4). Such Order was made final pursuant to the bankruptcy court's Final Order entered February 10, 1995.

Ansari appealed the bankruptcy court's Final Order to the district court, whose jurisdiction was based on 28 U.S.C.§ 158(a). The district court affirmed the Final Order on March 1, 1996. Ansari appealed the district court's Order to the United States Court of Appeals for the Fourth Circuit, whose jurisdiction was based on 28 U.S.C. § 158(d). The Court of Appeals affirmed the district court by its opinion and judgment dated May 8, 1997, which is the subject of this Petition.

In April 1990 Respondents sued Ansari in the Fairfax County Circuit Court (the "Fairfax Court") in Medina Development Company, et al. v. Ahmad Ali Massoud

Ansari, et al., Chancery No. 115845 (the "Chancery case"). By a letter opinion dated October 24, 1991, the Fairfax Court imposed the sanction of default on Ansari for perceived discovery violations during the Chancery case. J.A. at 201. The Fairfax Court recognized that Respondents' Chancery complaint contained "allegations of various breaches of fiduciary duty, breach of contract, slander of title, fraud and a prayer for an accounting," and an allegation that Ansari "was a fiduciary" of Respondent Pahlavi. J.A. at 187-88 (emphasis added). However, the basis for the default against Ansari was the Fairfax Court's finding that Ansari "failed to comply with various orders and decrees for discovery, and that in some instances these failures were willful." J.A. at 197 (emphasis added).

The Fairfax Court's letter opinion was incorporated by reference into the Decree And Order dated December 11, 1991, in which the Fairfax Court stated

> "These Cases came on for hearing . . . upon the Motions . . . for Sanctions as a result of repeated violations of the Court's discovery Orders and Decrees, and misrepresentations made in connection therewith[.]" J.A. at 202.

The Fairfax Court stated further that

> the allegations contained in the Bill of Complaint filed in [the Chancery case] are taken for confessed and are conclusively established as true, and the same shall be and hereby are accepted as findings of fact and conclusions of law in these proceedings; and . . . the claims for relief associated with Ansari's . . . failure to account, breach of contract, breach of fiduciary duty, breach of

> fiduciary duty to Medina, slander of title, and fraud, as well as appropriate injunctive relief, are hereby granted[.]

J.A. at 203.

The Fairfax Court entered a Decree Of Reference dated December 4, 1991 that was incorporated into the December 11, 1991 Decree And Order, by which the Fairfax Court referred the defaulted Chancery case to a Commissioner in Chancery "for the purpose of determination of the damages to be assessed against Ansari." J.A. at 204. In the December 4, 1991 Decree Of Reference, the Fairfax Court ordered the Commissioner in Chancery to "determine .... all . . . damages as may arise under the allegations of the Bill of Complaint." J.A. at 470 (emphasis added), reiterating that Ansari was

> in default; that all matters embraced in this cause are taken as confessed against Ansari . . . . that [his] Answer and all defenses are stricken; and . . . each and every one of the allegations contained in the Bill of Complaint . . . are taken to be true, all of which shall be accepted as findings of fact and conclusions of law in this matter.

J.A. at 468-69.

In conducting the accounting to determine Respondents' damages, the Commissioner in Chancery carefully followed the Fairfax Court's mandate to assume that all of Respondents' allegations were true, and the Commissioner in Chancery conducted the entire accounting under the umbrella of numerous allegations that were taken

as confessed against Ansari. In his first Report Of Commissioner In Chancery, dated May 26, 1992, he stated

> The [Fairfax] Court has found that the allegations of fraud and wrong doing which were contained in the Bill of Complaint are true. . . . The Commissioner has not revisited any of the findings made by the Court."

J.A. at 478. Thus, the Commissioner in Chancery sifted the accounting evidence in light of Respondents' mere allegations, which the Fairfax Court had ordered him to assume as the facts.

On September 2, 1992, the Fairfax Court entered a Decree confirming the Commissioner's Report that awarded Respondent Pahlavi $7,277,425.56 in compensatory damages against Ansari.

On November 24 and 25, 1992, the Fairfax Court held a two day hearing (the "Punitives hearing") on whether punitive damages were warranted against Ansari in addition to the compensatory damages that had already been awarded. The narrow issue that was the subject of the Punitives hearing was whether Ansari engaged in "misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others." J.A. at 215. The Punitives hearing had no impact on the compensatory damages previously awarded against Ansari based on the Commissioner's accounting that, in turn, was based on the assumption that each and every one of Respondents' allegations were true. The bankruptcy court explicitly denied summary judgment as to the nondischargeability of the punitive damages awarded against Ansari, J.A. at 135, and such ruling stands.

Argument

The Court of Appeals for the Fourth Circuit misapplied the Virginia principles of collateral estoppel in holding that the Virginia judgment debt owed by Ansari is nondischargeable in bankruptcy. While Ansari agrees with the Court of Appeals that Virginia law controls the preclusive effects of Virginia judgments in federal courts, see App. 4-5, Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 19 (4th Cir. 1997), the Court of Appeals incorrectly held that Virginia law would allow collateral estoppel in the circumstances of this case.

The elements for the application of collateral estoppel require that the issue have been "actually litigated" previously and that the determination of such issue have been "essential to" the prior judgment. App. 5, Ansari, 113 F.3d at 19 (quoting Transdulles Center, Inc. v. Sharma, 252 Va. 20, 472 S.E.2d 274, 275 (1996)). The bankruptcy issue, whether Ansari committed "fraud or defalcation while acting in a fiduciary capacity" under 11 U.S.C. § 523(a)(4), was neither actually litigated nor essential to the Virginia default judgment.

The only litigated issues that were essential to the default judgment were discovery issues over whether Ansari had complied with discovery requests and decrees. Such discovery issues were tangential to the allegations raised by Respondents' Chancery complaint, and when default was granted against Ansari for his perceived discovery violations, all of the allegations, including those allegations concerning Ansari's status as a fiduciary and any actions he took in that capacity, were taken as confessed, conclusively established as true, and accepted as findings of fact and conclusions of law in the proceedings. After the facts relevant to the fiduciary defalcation issue were assumed to be true, there

was never a need to "actually litigate" those issues, and the only issue that remained "essential to" the case was how much Ansari should be liable for, not whether he should be liable. Furthermore, during the subsequent accounting over damages before the Commissioner in Chancery, Ansari was not able to adequately defend against the Respondents' underlying substantive allegations, because the December 4, 1991 Decree Of Reference ordered Ansari's "Answer and all defenses . . . stricken[.]" J.A. at 468.

The policy rationale for the rule requiring "actual litigation" over "essential" issues is that while one court may dispose of an issue based on the exigencies of the situation before it, such a disposition is not a reliable adjudication of any issue unless there was adversarial litigation on such issue. Hildebrand v. Kugler (In re Kugler), 170 B.R. 291, 300 (Bankr. E.D. Va. 1994) (citation omitted). Thus, "Judgments based solely on facts that the courts have deemed admitted" are analogous to default judgments. Id. (citation omitted). Default judgments do not meet the "actually litigated" requirement for application of collateral estoppel. M & M Transmissions, Inc. v. Raynor (In re Raynor), 922 F.2d 1146 (4th Cir. 1991); Kugler, 170 B.R. at 298 (citing Restatement (Second) of Judgments § 27 cmt. e (1980) ("In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated.")). See also Bell v. Douglass, 184 B.R. 301 (N.D. Ill. 1995), in which the court held that the state court's summary judgment for fraud against the debtor did not have collateral estoppel effect in the bankruptcy dischargeability context, because the summary judgment motion was resolved on the basis of defaulted facts. This case presents an even more compelling argument against the application of collateral estoppel than Douglass, because the judgment against Ansari was not even based on a motion for summary judgment, but rather on

Respondents' motion for sanctions which, unlike a summary judgment, did not go to the merits of the case.

The Court of Appeals relied primarily on Transdulles, which it found analogous to this case. However, Transdulles is materially distinguishable. In Transdulles, when the defendant failed to appear for trial, the plaintiff put on ex parte proof to establish the merit of its underlying allegations. See App. 6, Ansari, 113 F.3d at 20. In this case, on the other hand, Respondents did not need to, and therefore did not, put on proof of the underlying allegations of their Chancery complaint, because all of their underlying allegations were already assumed to be true by virtue of the default. Furthermore, unlike the defendant in Transdulles, who declined to appear and defend, Ansari desired to defend Respondents' allegations but was prevented from doing so because all of his defenses had already been stricken. During the accounting and the Punitives hearing, which occurred after the default, the only issue was the amount of damages.

In applying Transdulles to this case, the Court of Appeals ruled that the federal nondischargeability issues were actually litigated in connection with an earlier decree of the Fairfax Court and at the Punitives hearing. With respect to the earlier decree, it is correct that the Fairfax Court decreed in February 7, 1991, prior to the default judgment, that Ansari acted as a fiduciary. However, such finding was in a Decree referring accounting issues to a Commissioner in Chancery, and was neither "actually litigated" nor "essential to" the Fairfax Court's then-ruling that an accounting should be conducted. The only "actually litigated," "essential" issue was whether an accounting was necessary. Moreover, such Decree Of Reference was later vacated expressly by that superseding Decree Of Reference dated December 4, 1991, J.A. at 468, that was entered in light of the default judgment granted against Ansari. It was the superseding referral to the

Commissioner that resulted in the accounting that established the amount of compensatory damages owed.

At the Punitives hearing, no pertinent nondischargeability issues were actually litigated and none were essential to the Fairfax Court's findings at the conclusion of the Punitives hearing. The punitive damages were fixed in light of the default judgment and the confessed allegations that had already been established against Ansari. Respondents' counsel himself prefaced the second day of the Punitives hearing with the statement that "As the Court knows, Mr. Ansari was defaulted in this case, and the allegations of the bill of complaint were established as true." J.A. at 861. He went on to rely on the pivotal allegations in the complaint that had been taken for confessed in the Chancery case, stating that one of his reasons was "to try to avoid any extended proof in relation to these things." Id. See also J.A. at 882 (Respondents' counsel agreed that the sole issue for the Punitives hearing was whether punitive damages were warranted, not whether the underlying compensatory liability was justified.)

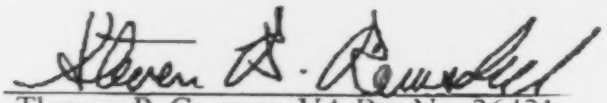
Under the weight of all of the confessed allegations, Ansari had no meaningful ability to defend himself at either the accounting or the Punitives hearing. Losing was a foregone conclusion.

Finally, the Court of Appeals also stressed the degree of Ansari's participation in the Fairfax Court litigation. Ansari does not dispute such participation. His position is simply that the Fairfax Court litigation was over discovery issues rather than over the merits of the underlying Chancery case, and that the issues that were actually litigated and essential to the adverse outcome were not issues that would establish collateral estoppel for nondischargeability purposes in Ansari's subsequent bankruptcy case.

Conclusion

For the foregoing reasons, a writ of certiorari should issue to review the Opinion and Judgment of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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In The

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October Term 1996

In re: Ahmad Ali Massoud Ansari,
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AHMAD ALI MASSOUD ANSARI,
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v.

REZA PAHLAVI,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Appendix to Petition for Writ of Certiorari

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re: AHMAD ALI MASSOUD ANSARI,
Debtor.

REZA PAHLAVI;
MEDINA DEVELOPMENT COMPANY,
Plaintiffs-Appellees,

v.

AHMAD ALI MASSOUD ANSARI,
Defendant-Appellant.

No. 96-1519

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Claude M. Hilton, District Judge.
(CA-95-1423-A, BK-93-11245)

Argued: April 7, 1997
Decided: May 8, 1997
Entered: May 8, 1997

Before RUSSELL, WILKINS, and MOTZ, Circuit Judges.

Affirmed by published opinion. Judge Motz wrote the opinion, in which Judge Russell and Judge Wilkins joined.

COUNSEL

ARGUED: Steven Brett Ramsdell, TYLER, BARTL, BURKE & ALBERT, P.L.C., Alexandria, Virginia, for Appellant. Robert Houghwout Loftus, MCCANDLISH & LILLARD, P.C., Fairfax, Virginia, for Appellees. **ON BRIEF:** Thomas P. Gorman, TYLER, BARTL, BURKE & ALBERT, P.L.C., Alexandria, Virginia, for Appellant.

OPINION

DIANA GRIBBON MOTZ, Circuit Judge:

The question presented here is whether the district court properly held that a default judgment entered by a Virginia state court was entitled to collateral estoppel effect in a subsequent federal bankruptcy case. Because the law of the state where the original litigation occurred controls the preclusive effect of its judgments in federal court and because Virginia law would allow collateral estoppel in these circumstances, we affirm the judgment of the district court.

I.

In April 1990, Reza Pahlavi, the son and heir of the former Shah of Iran, and his corporation, Medina Development Company (collectively "Pahlavi"), filed suit against Pahlavi's former financial adviser, Ahmad Ali Massoud Ansari ("Ansari"), in the Circuit Court of Fairfax County, Virginia. Pahlavi asserted that Ansari had committed fraud and breached his fiduciary duties, and sought an accounting and damages. After the parties engaged in discovery, in February 1991, that court issued an order

finding that Ansari did act as a fiduciary for Pahlavi and referring the case to a commissioner for an accounting.

The parties continued to engage in discovery and the Commissioner held numerous hearings. However, Ansari's dilatory tactics stalled any accounting. Eventually, on October 24, 1991, the state court issued an opinion letter, in which it found that Ansari had willfully disregarded multiple discovery orders and entered a default judgment for Pahlavi. The state court referred the case back to a commissioner for a calculation of compensatory damages; in doing so, the court ordered that all of the allegations in Pahlavi's complaint be taken as true.

Following more hearings, the commissioner issued a detailed report recommending that Pahlavi be awarded over six million dollars in compensatory damages. On September 2, 1992, after considering exceptions to that report, the state court confirmed it and awarded Pahlavi $7,277,425.56 in compensatory damages. Two months later, the state court held an evidentiary hearing as to punitive damages and at its conclusion awarded Pahlavi an additional $2,000,000 in punitive damages. The final decree awarding the compensatory and punitive damages was entered on February 26, 1993.

A month later, in March 1993, Ansari filed a petition for voluntary bankruptcy under Chapter 7. Pahlavi then filed this adversary proceeding in the bankruptcy case, seeking a declaration that the damages awarded in the state court judgment were non-dischargeable in the bankruptcy action.

The bankruptcy court granted Pahlavi summary judgment as to the compensatory damages award, finding that the award was entitled to collateral estoppel effect in the bankruptcy proceedings. The court concluded that the default judgment established that Ansari's debt to Pahlavi arose from fraud or defalcation, which Ansari committed while acting as a fiduciary to Pahlavi. Thus, the court held that the compensatory damage award was nondischargeable under 11

U.S.C. § 523(a)(4) (1994), which prohibits the discharge of any debt "for fraud or defalcation while acting in a fiduciary capacity." The court denied summary judgment as to the punitive damages award, finding that it needed further evidence to determine whether that award was also nondischargeable. The bankruptcy court then entered final judgment as to the compensatory damage award, staying all other claims pending resolution of the appeal of its determination on that issue. On appeal, the district court affirmed.

II.

Ansari maintains that the bankruptcy court and the district court erred in applying the collateral estoppel doctrine. He asserts that state court default judgments cannot act as collateral estoppel in subsequent federal bankruptcy dischargeability proceedings.

[1] We have previously explored the proper approach to this question, explaining:

> In Grogan v. Garner, [498 U.S. 279, 284 & n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991)] the Supreme Court concluded explicitly that principles of collateral estoppel apply in dischargeability proceedings in bankruptcy. In determining the preclusive effect of a state-court judgment, the federal courts must, as a matter of full faith and credit, apply the forum state's law of collateral estoppel. . . . "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."

Hagan v. McNallen (In re McNallen), 62 F.3d 619, 624 (4th Cir. 1995) (quoting Allen v. McCurry, 449 U.S. 90, 96, 101 S.Ct. 411, 415-16, 66 L.Ed.2d 308 (1980)). Thus, in order to determine whether the bankruptcy court correctly applied collateral estoppel principles, we must examine the law of Virginia, where the judgment relied upon originated.

A.

[2] The Virginia Supreme Court recently defined the elements of collateral estoppel in Transdulles Center, Inc. v. Sharma, 252 Va. 20, 472 S.E.2d 274 (Va. 1996):

> For [collateral estoppel] to apply, the parties to the two proceedings, or their privies, must be the same; the factual issue sought to be litigated actually must have been litigated in the prior action and must have been essential to the prior judgment; and the prior action must have resulted in a valid, final judgment against the party sought to be precluded in the present action. Glasco v. Ballard, [249 Va. 61, 452 S.E.2d 854, 855 (Va.1995)].
> Additionally, collateral estoppel in Virginia requires mutuality. . .

Transdulles, 472 S.E.2d at 275.

Ansari does not dispute that the state court default judgment against him meets the majority of Virginia's requirements for collateral estoppel: identical parties, a valid, final judgment, and mutuality. Ansari argues, however, that because the state court judgment was a default judgment entered as a discovery sanction, the parties never "actually litigated" Ansari's fiduciary status or whether a defalcation

occurred, and, in any event, determination of those issues was not "essential" to the state court's judgment.

In Transdulles, the Virginia Supreme Court discussed at length whether and under what circumstances a default judgment can be regarded as "actual litigation" of "essential" issues in a prior action for collateral estoppel purposes. Therefore, Transdulles controls our inquiry here.

In Transdulles, a landlord brought suit against a tenant for possession of commercial property and for delinquent rent and fees. Transdulles, 472 S.E.2d at 275. The tenant did not appear in court at the scheduled trial, and the landlord "presented testimonial evidence and exhibits in the tenant's absence." Id. The trial court entered a default judgment against the tenant for back rent and fees, as well as awarding possession to the landlord. Id. The tenant did not appeal and the judgment became final. Id. A year later the landlord sued the tenant again for the rent that had accrued under the lease since the previous judgment. The state court refused to apply collateral estoppel to the issue of the tenant's liability for the rent, and entered judgment fo the landlord: it held that "a default judgment does not actually litigate issues for the purposes of collateral estoppel." Id.

On appeal to the Virginia Supreme Court, the tenant argued that, as evidenced by the Restatement of Judgments, "[a] default judgment cannot be used for collateral estoppel purposes, because no issues are `actually litigated.'" Id. at 276 (quoting United States v. Ringley, 750 F.Supp. 750, 759 (W.D. Va. 1990), and citing Restatement (Second) of Judgments § 27 cmt. e (1982)). The Virginia Supreme Court, however, expressly rejected the "view typified by the Restatement." Transdulles, 472 S.E.2d at 276. It concluded that "Virginia law does not support a blanket exemption from the application of collateral estoppel in the case of a default judgment." Id. The tenant also contended that because he had not personally appeared in court before entry of the default judgment, no issue had been actually litigated. Again, the

Virginia Supreme Court "disagree[d] with the tenant's argument." Id. Rather, it reasoned that because "documentary evidence was presented ex parte in the district court hearing" the necessary issues had been actually litigated. Id. Accordingly, the Transdulles court concluded that the default judgment did act as collateral estoppel in the second action, and reversed the trial court's contrary holding. With controlling Virginia law in mind, we turn to the case at hand.

B.

[3] In order to prove a debt is non-dischargeable under § 523(a)(4) of the Bankruptcy Code, a creditor must prove the debtor committed "[1] fraud or defalcation [2] while acting in a fiduciary capacity." 11 U.S.C. § 523(a)(4). Ansari argues that neither of these issues were actually litigated in state court, let alone "essential" to the state court's judgment. He maintains that the only issue litigated in state court, and essential to its judgment, was whether he violated the court's discovery orders. Ansari is mistaken.

The question of whether Ansari acted as a fiduciary for Pahlavi was actually litigated and resolved early in the case. Pahlavi continually asserted that Ansari was his fiduciary and submitted documents and depositions to support this position. On February 7, 1991 -- eight months before entry of the default judgment -- the state court issued an order expressly finding that Ansari acted in a fiduciary capacity: "Ansari . . . was the fiduciary for the Complainant, Reza Pahlavi . . .at all times relevant to the Bill of Complaint." For this reason, the court granted Pahlavi's motion to refer the case to a commissioner for an accounting. Thus, the parties litigated Ansari's status as a fiduciary before the state court and that court decided the issue.

[4,5] Similarly, the parties litigated, and the state court resolved, the question of Ansari's defalcation. A defalcation under 523(a)(4) is "misappropriation of trust funds or money held in any fiduciary capacity; [or the]

failure to properly account for such funds." In re Niles, 106 F.3d 1456, 1460 (9th Cir. 1997) (quoting Black's Law Dictionary 417 (6th ed. 1990)). "[A] `defalcation' for purposes of this statute does not have to rise to the level of `fraud,' `embezzlement,' or even `misappropriation.'" Quaif v. Johnson, 4 F.3d 950, 955 (11th Cir. 1993) (citing Central Hanover Bank & Trust Co. v. Herbst, 93 F.2d 510, 512 (2d Cir. 1937) (Learned Hand, J.)).

Pahlavi initiated the state court proceedings a year and a half before the entry of the default judgment. Prior to the default, multiple depositions were taken, many documents exchanged and the court and commissioner held numerous hearings in which Ansari appeared in person or by counsel. The principal focus of this effort was whether and to what extent Ansari, acting as Pahlavi's fiduciary, had defrauded Pahlavi or misappropriated funds from him. Only when it became clear that Ansari had refused to comply with discovery orders did the court broaden its inquiry into violations of its orders. In sum, there was much more evidence before the state court in this case than in Transdulles, and the parties here certainly engaged in more extensive and two-sided litigation of the relevant issues.

Further, determination of these issues -- whether Ansari was a fiduciary and whether he misappropriated funds -- was essential to the state court's judgment. The Transdulles court held that "the tenant's personal liability was essential to the district court judgment" because "[t]hat court could have merely awarded the landlord possession of the premises without imposing personal liability for rent and fees, but it did not." 472 S.E.2d at 276. Similarly, the state court here could have punished Ansari's discovery violations by imposing a fine based upon the time lost by Pahlavi's attorneys or the court, but it did not. Rather, it assessed compensatory damages against Ansari based on the exact amount that Ansari, as a fiduciary, was found to have misappropriated from Pahlavi. Thus, as in Transdulles, "the

factual issue[s] existing in the present proceeding [fraud and fiduciary capacity], w[ere] a necessary part of the judgment in the prior proceeding." Id.

[6] Moreover, even if the state court in this case had heard no evidence of fraud or defalcation before entering its default judgment against Ansari, the court's subsequent consideration and findings of punitive damages would certainly suffice for collateral estoppel purposes. The court awarded punitive damages to Pahlavi after finding "proof of misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others." The state court's holding under this standard clearly includes the lesser finding of defalcation.

Ansari does not contend to the contrary. What Ansari argues is that findings made during the punitive damages proceedings cannot act as collateral estoppel because, pursuant to the terms of the default judgment, all allegations in the complaint were taken as true. This argument overlooks the fact that in awarding punitive damages the state court did not rely solely on the allegations in the complaint. Rather, the court held a two-day hearing in which Pahlavi, Ansari, and other witnesses testified. At the conclusion of the hearing, the court weighed "the credibility of the witnesses to determine which version of what was testified to was persuasive," and recognized that "there [were] diametrically opposed positions on what occurred during almost ten years." The court expressly found"Mr. Pahlavi's evidence more credible" and found "misconduct," specifically "a pattern of conduct that occurred practically from the outset of the relationship between Mr. Pahlavi and Mr. Ansari."

Pahlavi and Ansari engaged in vastly more "actual litigation" of the critical issues in this case than did the landlord and tenant in Transdulles. The state court's findings on these issues were as essential to its judgment here as they were in Transdulles. Thus, the state court judgment in this

case clearly meets the Transdulles requirements for collateral estoppel.

C.

Before concluding our discussion of collateral estoppel, we note that our conclusion finds support in decisions from two of our sister circuits and is in no way contrary to our holding in M & M Transmissions, Inc. v. Raynor (In re Raynor), 922 F.2d 1146 (4th Cir. 1991).

Recently, the Fifth, Eleventh, and Ninth Circuits have held that when a party has appeared and litigated a matter, a default judgment subsequently entered for discovery violations can act as collateral estoppel in a later case. See Gober v. Terra + Corporation (In re Gober), 100 F.3d 1195, 1205-06 (5th Cir. 1996) (fact that state court default judgment was entered "only after Gober had repeatedly impeded the course of the proceedings by refusing to comply with discovery and by defying court orders" bolstered court's conclusion that the bankruptcy court "properly afforded collateral estoppel effect" to the state default judgment); Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir. 1995) ("Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the [proceedings] a district court [may] apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior litigation."); FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir. 1995) ("A party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication.").

Nor is Raynor contrary to our conclusion here. Raynor, like the case at hand, dealt with whether a state court default judgment for fraud could be used as collateral estoppel in a later bankruptcy dischargeability proceeding under 11 U.S.C. § 523(a)(2)(A) (1994). See 922 F.2d at 1148. There we refused to give a North Carolina state court default judgment collateral estoppel effect on the issue of fraud because "[t]he record of the state court proceedings discloses that the issue of fraud was not actually litigated. Raynor was not aware of the proceeding. The court's findings of fact and conclusions of law supporting its judgment were prepared by [plaintiff's] counsel. The record contains no transcript of the evidence or depositions." Id. at 1149.

Critical differences distinguish this case from Raynor. First, and most obviously, while Virginia law governs this case, North Carolina law controlled in Raynor. North Carolina, unlike Virginia, has never rejected the majority view stated in the Restatement that "[a] default judgment cannot be used for collateral estoppel purposes, because no issues are actually litigated." U. S. v. Ringley, 750, 759 (W.D. Va. 1990), citing Restatement (Second) of Judgments § 27 cmt. e (1982). Indeed, examination of the briefs in Raynor indicates that no party suggested that North Carolina's law of collateral estoppel differed from the principle set forth in the Restatement. Furthermore, even if Virginia law had been applicable in Raynor, it is not at all clear that the result there would have been different. This is so because in Raynor, unlike the case at hand, the parties engaged in literally no litigation on the issue of fraud. See Raynor, 922 F.2d at 1149. Moreover, none of the policy concerns addressed by the Fifth, Eleventh, and Ninth Circuits in Gober, 100 F.3d at 1206, Bush, 62 F.3d at 1325, and Daily, 47 F.3d at 368 would justify application in Raynor of collateral estoppel. Thus, Raynor provides no assistance to Ansari here.

III.

Ansari advances two other non-meritorious arguments for reversal.

First, he maintains that the bankruptcy court made a crucial factual error in describing the timing of the state court's imposition of punitive damages. The bankruptcy court denied summary judgment as to the punitive damages award because it found punitive damages "were granted post-petition and were not enacted at that time." Ansari argues that this statement demonstrates that the bankruptcy court thought that only the punitive damages were awarded after the default judgment ("post-petition"), when actually both the compensatory and punitive damages were awarded after the entry of the default judgment. The bankruptcy court's reference to "post-petition" may only have been intended to signify that the punitive damages were awarded separately and after the compensatory damages. Even if the bankruptcy court did confuse the timing of the punitive damage award, the treatment of that award is not before us. The bankruptcy court evidenced no confusion as to the timing of the compensatory damage award and even if it had. Ansari has failed to demonstrate how such confusion would affect any legal conclusion at issue here.

[7-9] Finally, Ansari asserts reversal is required because the bankruptcy court erroneously referred to "res judicata" in its oral ruling instead of collateral estoppel. The bankruptcy court did mention the wrong legal doctrine. Res judicata prohibits relitigation of an identical legal claim. See Keith v. Aldridge, 900 F.2d 736, 739 (4th Cir. 1990). Collateral estoppel, by contrast, bars relitigation of the same issue. See Raynor, 922 F.2d at 1149. Pahlavi's claim in the bankruptcy court -- that Ansari's debt to him is nondischargeable -- is certainly different from Pahlavi's claim in state court -- that Ansari defrauded Pahlavi and

breached fiduciary duties owed to Pahlavi. Thus the correct preclusion principle in this case is collateral estoppel, and not res judicata.

However, the bankruptcy court's error in terminology is of no consequence since the court did not erroneously apply res judicata principles. The bankruptcy court did not hold that the state court default judgment barred the parties from relitigating the legal claim of dischargeability. Instead, the court properly applied collateral estoppel principles, holding that the state court had previously decided the legal issues of fiduciary status and fraud, and prohibiting the parties from relitigating those issues. Therefore, the bankruptcy court actually performed a collateral estoppel analysis, albeit characterizing it as res judicata. Because the bankruptcy court applied the correct analysis, its only error was one of semantics and provides no basis for reversal.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In Re:

Case No. 93-11245-AB
AHMAD ALI MASSOUD ANSARI, Chapter 7
Debtor.

AHMAD ALI MASSOUD ANSARI,
Appellant,

v. Civil Action No. 95-1423-A

REZA PAHLAVI and
MEDINA DEVELOPMENT COMPANY,
Appellees.

ORDER

ENTERED: March 1, 1996

This matter comes before the Court on appeal of the decision of the United States Bankruptcy court dated February 28, 1994. For the reasons stated from the bench, it is hereby

ORDERED that the decision of the United States Bankruptcy Court is AFFIRMED.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE
Alexandria, Virginia
March 1, 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

AHMAD ALI MASSOUD ANSARI,

Appellant,

vs. C.A. No. 95-1423-A

REZA PAHLAVI, et al.,

Appellees.

HEARING ON MOTIONS

March 1, 1996

Before: Claude M. Hilton, Judge

APPEARANCES:

Steven B. Ramsdell, Counsel for the Appellant
Robert H. J. Loftus, Counsel for the Appellees

THE CLERK: Civil action 95-1423-A, Ahmad Ali Massoud Ansari versus Reza Pahlavi. Are counsel present and ready, please?

MR. LOFTUS: Yes, we are.

MR. RAMSDELL: Good morning, sir. I am Steve Ramsdell for appellant, the defendant and debtor in the Bankruptcy Court.

THE COURT: Good morning.

MR. RAMSDELL: Your Honor, are we seeking to have reversed an order of the Bankruptcy Court granting summary judgment to the plaintiffs below against my client on the basis of collateral estoppel. Judge Bostetter held that the plaintiffs' $7 million-plus judgment for compensatory damages was nondischargeable by collateral estoppel because of the parties' prior litigation out in Fairfax County.

Because the Fairfax judgment was a default judgment granted as a sanction to the plaintiffs for perceived discovery abuses by Ansari in the Fairfax litigation, our position is that collateral estoppel was improperly applied by the Bankruptcy Court.

THE COURT: Judge Bostetter found that there had been some findings in Fairfax both by the commissioner and the judge that this involved a breach of fiduciary duty, did he not?

MR. RAMSDELL: Your Honor, the findings by the commissioner, to take them in two parts, were based on the allegations that were confessed against Ansari after the default judgment was entered. There was a decree--

THE COURT: You are stuck with those, you know, aren't you? There are certain allegations in a complaint or in a motion for judgment, and if you don't respond to them and a judgment is entered on them, you are stuck with them.

MR. RAMSDELL: That's correct. Ansari was stuck with the allegations without getting an opportunity to actually litigate those allegations, which is an element for application of collateral estoppel.

THE COURT: What do you mean he didn't have an opportunity to litigate them? He had every opportunity. The reason that he granted judgment is because he refused to come in and comply and to go forward with litigation, isn't it?

MR. RAMSDELL: He lost the litigation over the discovery dispute. And as a result, he was punished by having to lose on every single allegation of the complaint. And as a result, every single allegation of the complaint was not actually litigated before the Court.

THE COURT: Well, he had every opportunity to comply with discovery and come in there and go forward with it. He was right there. He just refused to do it, didn't he?

MR. RAMSDELL: That was the finding.

THE COURT: Well, it seems to me that that's the case. I am giving you an opportunity to tell me it is something other that that, but it seems to me if you are in a case and you refuse to go forward in the case, you are stuck with it. What other interpretation could you have?

MR. RAMSDELL: Your Honor, I would submit--

THE COURT: If you can say, if I get in the case, all the defendant has to do if a lawsuit is filed is just sit down and say, I am going to do nothing, and then it will disappear, that would be the greatest defense in the world. Nobody could ever proceed, could they?

MR. RAMSDELL: I understand what the Court is saying. I would submit that a distinction between res judicata and collateral estoppel is important here. Res judicata would apply to any final judgment whether the specific issues under the umbrella of the judgment were litigated or not.

Collateral estoppel is a little different. An issue will be held dispositive in future litigation against a litigant only if he had an opportunity to actually litigate that specific issue. And the issues of fiduciary capacity and defalcation while action in that fiduciary capacity were not actually litigated. They were taken as confessed as a punishment for the perceived discovery abuse.

THE COURT: I thought we had agreed that he had the opportunity to litigate.

MR. RAMSDELL: Over the perceived discovery abuses, not over the fiduciary capacity and defalcation issues.

THE COURT: Well, he had every opportunity to litigate those issues too. He didn't do it because he refused to comply with the discovery.

MR. RAMSDELL: Well, he wasn't allowed to do it after he got punished for a perceived violation of discovery.

THE COURT: Well, that is one way to put it, but it seems to me that he was there and had every opportunity to comply with the discovery and go ahead.

This had been kind of an interesting issue to look at. but I must say I am having a hard time getting on your wavelength, if I can use that term. I understand your argument, but it seems to me that he had every opportunity to litigate this issue. It was there. The findings were made by the commissioner based on the allegations in the pleadings. A magistrate judge found that Judge Williams had made those findings as well. And I forget where, but it seems to me I read that somewhere.

But if you sit down in the middle of a case and refuse to do anything and a judgment is entered against you on the allegations that are in the complaint or the motion for judgment, then you are stuck with them.

MR. RAMSDELL: Your Honor, I think the Fairfax Court, why would it entertain litigation over issues that were established by default? It didn't do that. And it wouldn't make any sense. And without the actual litigation over specific issues, I don't think the Court can have a reliable indication on what the true state of the underlying facts are.

But I think the court understands my argument. I have got one additional argument. The bankruptcy judge did make one clearly erroneous finding of fact; namely, that the commissioner had already fixed the amount of damages prior to the default judgment. And as a matter of fact, the judge put

the two backwards. The default judgment was granted by a decree entered December 11, 1991 which incorporated at that point a new decree of reference to the commissioner in chancery, who then fixed the damages between December 11, 1991 and September 2, 1992.

And this is important because one of the reasons that the Bankruptcy Court did not grant summary judgment on the issue of punitive damages is that he noted that the punitive damages arose by virtue of the default judgment and after the default judgment. And had he understood that the compensatory damages were fixed by the commissioner after the default judgment, like the punitives were, then we can only assume he would have treated those the same way and withheld summary judgment pending a trial on the merits.

THE COURT: All right. What do you have to say about this damage issue, Mr. Loftus?

MR. LOFTUS: With respect to the second issue-- Excuse me, Your Honor. Robert Loftus for the appellees. With respect to the second issue raised by counsel?

THE COURT: Yes, this issue of damages.

MR. LOFTUS: Yes, sir.

THE COURT: I am a little uncertain about that.

MR. LOFTUS: Yes. What counsel is referring to is contained in the transcript of Judge Bostetter's ruling where he granted summary judgment on the fiduciary duty and defalcation issue, but deferred ruling on confirming the award of punitive damages against Mr. Ansari in the amount of $2 million. And he discussed in his ruling why he felt that the fiduciary duty issue and the defalcation issue was actually adjudicated notwithstanding this whole question raised by Mr. Ansari about default.

And what he said was, and I disagree with counsel's rendition of the facts, was very carefully phrased. And it appears at page 5 of his ruling. At that point he says and directs his comments to a second order. And if I could back up to give the Court some of the chronology here.

In December of 1991 Judge Williams of the Fairfax County Circuit Court declared Mr. Ansari to be in default. He had previously ruled by an order entered before he declared this default that Mr. Ansari was in fact a fiduciary and had ordered him to account. And proceedings had been occurring in front of the commissioner. In fact, they had been occurring by about ten months at the time the default was entered.

At that point Judge Williams entered another order sending the matter back to Commissioner Mackall to also include a calculation of the damages. That is the order that counsel has referred to as the default judgment. And based upon counsel's characterization of that, has interpreted what Judge Bostetter said.

That is not what Judge Bostetter said. Judge Bostetter in his ruling carefully distinguished that order from a later order after the completion of the hearings in front of Commissioner Mackall and the argument of exceptions, an order that was entered in September of 1992. In that order Judge Williams entered judgment against Mr. Ansari for compensatory damages in the amount of $7 million.

Judge Bostetter in his ruling at page 5 is speaking in the context of the conclusion of the commissioner hearings, the completion of the exceptions, and he specifically refers to that. And then he says, he refers to a default judgment being entered. That is only that order in September of 1992 that actually entered an order against Mr. Ansari, entered judgment against Mr. Ansari.

Now, at that point Judge Bostetter said, that default having been entered at that point, I will defer ruling on the punitive damage award because the punitive damages were awarded as a result of a two-day hearing that occurred in November of 1992, two months later. That is what Judge Bostetter said.

He did not confuse what he considered to be an interlocutory default against Mr. Ansari entered in December

of 1991 with the subsequent order which he clearly indicates is the one he is thinking of as being the default.

So, there is no confusion in Judge Bostetter's ruling or his thinking on this point.

I emphasize this point to perhaps give me an opportunity to address the first issue counsel raised here this morning in that I believe very strongly that this record clearly shows, as Judge Bostetter ruled, that there was in fact an adjudication in the course of this proceeding--

THE COURT: I don't think you need to address that, Mr. Loftus.

MR. LOFTUS: Yes, Your Honor. Thank you, Your Honor.

THE COURT: I think it is clear that there was an adjudication and that the decision of the Bankruptcy Court should be affirmed. I believe also on this damage issue as well.

Now, if there is something you want Judge Bostetter to reconsider about whether or not he was confused in the dates of the order in his mind in terms of establishing these damages, I believe you need to raise that with him.

But I find the decision of the Bankruptcy Court to be a proper one, and it will be affirmed.

MR. LOFTUS: Thank you, Your Honor.

HEARING CONCLUDED

I certify that the foregoing is a true and accurate transcription of my stenographic notes.

/s/_____

Norman B. Linnell, CP, CM, CE

Robert H. J. Loftus
Virginia Bar No. #13407
Brian F. Kenney, Esquire
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11350 Random Hills Road
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Fairfax, VA 22030
(703) 273-2440

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)
	)
AHMAD ALI MASSOUD ANSARI,	)
	)
Case No. 93-11245-AB	)
(Chapter 7)	)
Debtor.	)
	)
REZA PAHLAVI and MEDINA DEVELOPMENT COMPANY,	)
	)
Plaintiffs,	)
	)
v.	)
Adversary Proceeding No. 93-1183	)
	)
AHMAD ALI MASSOUD ANSARI,	)
	)
Defendant.	)

FINAL ORDER

ENTERED: February 7, 1995

By Order entered on the docket on February 28, 1994, this Court granted Partial Summary Judgment in favor of the Plaintiffs, Reza Pahlavi and Medina Development Company, against Defendant/Debtor Ahmad Ali Massoud Ansari, finding that the portion of a judgment rendered against the Defendant Ahmad Ali Massoud Ansari by the Circuit Court of Fairfax County in the amount of $7,277,425.56 for compensatory damages was nondischargeable in accordance with 11 U.S.C. §523, and denied Plaintiffs' Motion for Partial Summary Judgment with respect to the $2,000,000.00 award of punitive damages likewise granted by the Circuit Court of Fairfax County, on the grounds that further evidence needed to be presented to determine whether said award of punitive damages was non-dischargeable.

IT APPEARING THAT the Exhibits filed by Plaintiffs in support of their Motion for Partial Summary Judgment are in need of revision in that Exhibit 37 thereof has sub-exhibits which need to be relabeled with letters rather than numbers, it is

ORDERED that Plaintiffs are authorized to file a corrected Exhibit List and to substitute letters for numbers under Exhibit 37 in the Exhibit Books on file with the clerk's office.

IT FURTHER APPEARING TO THE COURT, that Plaintiffs Reza Pahlavi and Medina Development Company are willing to forego presentation of further evidence in support of their claims for non-dischargeability of their claims for punitive damages and in support of their claims pursuant to 11 U.S.C. §727 that Ahmad Ali Massoud Ansari should be denied a discharge unless and until the grant of

Partial Summary Judgment should be reversed, modified, and/or remanded for further proceedings, it is accordingly

ORDERED that the Order granting Partial Summary Judgment is hereby declared final and all objections thereto of the parties are preserved notwithstanding their endorsement of this Order as agreed, and such judgment is declared to be non-dischargeable pursuant to Bankruptcy Code 11 U.S.C. §523; and it is further

ORDERED that the remainder of the Plaintiff's Complaint is stayed, provided, however, that in the event of a reversal, modification, and/or remand of the final judgment herein granted for further proceedings, Plaintiffs shall be entitled to present their evidence in support of their claims for non-dischargeability pursuant to 11 U.S.C. §523 of their claims for punitive damages and in opposition to the Debtor's discharge pursuant to 11 U.S.C. §727. In the event this Final Order is firally affirmed on appeal and the judgment granted herein becomes final, Plaintiff's claims for non-dischargeability of their claims for punitive damages pursuant to 11 U.S.C. §523 and in opposition to the Debtor's discharge pursuant to 11 U.S.C. §727 shall stand dismissed with prejudice.

Debtor agrees that the failure of Plaintiffs to appeal from the denial of their Motion for Partial Summary Judgment with respect to the non-dischargeability of their punitive damage claims shall have no preclusive or probative effect in the event the stay of Plaintiffs' claims is lifted in accordance with the terms of this Final Order, and Debtor waives the right to make any such assertion.

During the pendency of an appeal of this Final Order, Plaintiffs agree to not execute on the judgment herein granted against Ahmad Ali Massoud Ansari.

ENTERED THIS 7th DAY OF February, 1995.

/s/_____
MARTIN V. B. BOSTETTER, JR.
Chief Judge

SEEN AND AGREED TO EXCEPT AS TO ADVERSE RULINGS ON MOTION FOR PARTIAL SUMMARY JUDGMENT:

MILES & STOCKBRIDGE, P.C.

By:/s/_____
Robert H.J. Loftus (VSB #13407)
Brian F. Kenney (VSB #23199)
11350 Random Hills Road, Suite 500
Fairfax, Virginia 22030
(703) 273-2440
Counsel for Plaintiffs
Medina Development Company and Reza Pahlavi

SEEN AND AGREED TO EXCEPT AS TO ADVERSE RULINGS ON MOTION FOR PARTIAL SUMMARY JUDGMENT:
TYLER, BARTL, BURKE & ALBERT, P.L.C.

By:/s/_____
Thomas P. Gorman
300 North Washington, Suite 500
Alexandria, Virginia 22314-2548
Counsel for Debtor
Ahmad Ali Massoud Ansari

Robert H. J. Loftus
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11350 Random Hills Road
Suite 500
Fairfax, VA 22030
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)
	)
AHMAD ALI MASSOUD ANSARI,	)
	Case No. 93-11245-AB
	(Chapter 7))
Debtor.	)
	)
REZA PAHLAVI and MEDINA DEVELOPMENT COMPANY,	)
	)
Plaintiffs,	)
	)
v.	)
	Adversary Proceeding
	No. 93-1183)
AHMAD ALI MASSOUD ANSARI,	)
	)
Defendant.	)
	)

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

ENTERED: February 25, 1994

THIS MATTER came on to be heard on December 22, 1993, upon the Motion for Partial Summary Judgment of the Plaintiffs Reza Pahlavi and Medina Development Company and upon the response thereto of the Defendant/Debtor Ahmad Ali Massoud Ansari, and, upon consideration of the briefs, and arguments of counsel, and the exhibits tendered by the parties, it is, in accordance with the reasons sated by the Court from the bench, a copy of the transcript of which is attached hereto and made a part hereof, accordingly

ORDERED, that Partial Summary Judgment be and the same hereby is granted against Ahmad Ali Massoud Ansari in favor of Plaintiffs in the amount of $7,277,425.56 for compensatory damages, and the Court declares that the foregoing judgment is non-dischargeable in accordance with 11 U.S.C. §523; and it is hereby,

FURTHER ORDERED, that the Motion for Partial Summary Judgment with respect to the $2 million award of punitive damages is hereby denied, as the Court must hear evidence in order to determine whether the same is non-dischargeable.

ENTERED THIS 25TH DAY OF FEBRUARY, 1994.

/s/_____
MARTIN V. B. BOSTETTER, JR.
Chief Judge

SEEN AND OBJECTED TO:

MILES & STOCKBRIDGE

By: /s/_____
Robert H.J. Loftus (VSB #13407)
Brian F. Kenney (VSB #23199)
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Counsel for Plaintiffs
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SEEN AND OBJECTED TO:

TYLER, BARTL, BURKE & ALBERT

By:/s/_____
Thomas P. Gorman
300 North Washington
Suite 500
Alexandria, Virginia 22314-2548
Counsel for Debtor
Ahmad Ali Massoud Ansari

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE:
AHMAD ALI MASSOUD ANSARI, 93-1183
Debtor. Chapter 7

REZA PAHLAVI
and
MEDINA DEVELOPMENT COMPANY,
Plaintiffs,

v. C.M. 93-11245

AHMAD ALI MASSOUD ANSARI,
Defendant.

Wednesday, December 22, 1993

United States Bankruptcy Court
Alexandria, Virginia

The above-entitled matter came on to be heard before THE HONORABLE MARTIN V.B. BOSTETTER, JR., Chief Judge, in and for the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, beginning at 9:35 o'clock a.m.

APPEARANCES:

On behalf of the Debtor/Defendant:

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(703)549-5000

On behalf of the Plaintiffs:

ROBERT H. J. LOFTUS, ESQUIRE
MILES & STOCKBRIDGE
11350 Random Hills Road, Suite 500
Fairfax, Virginia 22030-3261
(703)273-2440

EXCERPT OF PROCEEDINGS

(Whereupon, there were prior proceedings not transcribed at this time.)

* * * * * * * * *

THE COURT: I find from the documents before me as evidence in this case, which have been referred to by counsel -- and, based upon the argument and the reference to them, I assume that the documents that are referred to are not objected to and should be considered by the Court. In a judgment entered by the state court in a proceeding before Judge Williams of the Fairfax County Circuit Court, Judge Williams, via a written opinion dated October 24, 1991, because of misconduct by the Defendant/Debtor in this case, the Court found that, "Mr. Ansari misled this court throughout this litigation and has acted with a lack of diligence and good faith. Mr. Ansari's actions had an

irreversible impact on the course of the litigation. Under the applicable case law and the broad discretion given to trial courts in determining what sanctions to impose, this Court finds that the sanctions of dismissal in the law case and judgment on the pleadings in the chancery case are appropriate," and then he gives judgment to the plaintiff here.

In the reference to the Commissioner, Mr. Mackall, entered by Judge Williams on the 7th day of February 1991, more than eight months prior to the default judgment, Judge Williams recited at paragraph one of that Decree of Reference to the Commissioner, dated the 7th day of February, "It appearing to the Court that the Respondent, Ahmad Ali Massoud Ansari, "Ansari," was the fiduciary for the Complainant, Reza Pahlavi, "Pahlavi" at all items relevant to the Bill of Complaint." I find, from a reading of the agency agreement and this finding by the Court, which I consider to be res judicata, and, even from the reading of the agreement alone, I could find that he was a fiduciary. Nevertheless, this is a finding, and I find it to be within the purview of Section 523 of the Statute, that it falls within that purview. Furthermore, I find that, in that same reference to the Commissioner, it says, "It further appearing to the Court that Ansari has been entrusted with the management of financial affairs of Pahlavi and large sums of money during the period and that he acted as Pahlavi's fiduciary." That, as far as I'm concerned, places this case within the purview of Section 523 of the Statute.

We then turn to the damages. And it has been conceded by Mr. Gorman that the amount fixed by the Commissioner, $6 million, is correct for something. However, before the default judgment was entered, Commissioner Mackall made findings as to amounts due and owing. There were exceptions taken to this. And, as I read the documents, the exceptions were affirmed as far as the amount of money is concerned, and Mr. Gorman concedes

that. I find that is res judicata, as to the amount in this case, and that amount is non-dischargeable.

Now, as far as punitive damages are concerned, they arose by virtue of the default judgment. Therefore, I find that the $6 million figure, by virtue of the fact that the Debtor here was a fiduciary and has violated the provisions of 523(a)(4), in that he committed fraud or defalcation while acting in a fiduciary capacity -- and, of course, we all know, I hope, that it doesn't take much for a defalcation, but it certainly exists here. I further find from the actions of -- And that is the pillar of my ruling, I've just indicated. However, I find also that the Court found that this is willful and malicious action. On a cursory reading of that, it appears to me that that's within the statute, also a violation. However, I make no finding on that at this time. I find that the Debtor/Defendant here was a fiduciary by reading of the agency agreement, furthermore by ruling of the state court, a court of competent jurisdiction, to which the Court must give due deference -- This court must give due deference as a Federal court -- and furthermore, that the amount has been fixed. If punitive damages are to be assessed -- Well, I'm not sure that punitive damages would fall within the purview of the Statute, since they were granted post-petition and were not enacted at that time. Therefore, I determine that the punitive damages are dischargeable, because they were not created at the time of the transaction, and that's the date on which these transactions occurred.

Counsel, you will -- I'm ruling -- You look like you're not sure. I'm ruling that you have a non-dischargeable judgment for the amount found for the defalcation. The $2 million arose by actions of the Defendant post-agreement, and I cannot find at this time, based upon the evidence -- and I'm fully aware of the *Piggy* case, which arose out of this court, and in which I was reversed by the Court of Appeals, saying that I have to look behind the state court findings in order to determine that the

debt is non-dischargeable. This was entered because of default, and the data on this -- of course, any fiduciary situation has to be by virtue of an expressed trust. And I find that the agency agreement is an expressed judgment. As far as willful and malicious is concerned, I really cannot find at this point based on the record -- Even though the state court has said that it was willful and malicious, I think I want to take some more testimony on that. That's why I'm reserving the right. I think that I could find that it was willful and malicious, but I can't based upon the record at this point. All right?

MR. LOFTUS: Your Honor, I think I understand your ruling. With respect to the amount, the amount of the judgment resulting from the accounting, et cetera, was $7,277,000 --

THE COURT: Well, Commissioner Mackall has found it. It was affirmed by the Court, as I understand it.

MR. LOFTUS: The judge raised it, in quoting the exceptions, to $7,277,000.

THE COURT: All right. Well, that's the amount, whatever Judge Williams found.

MR. LOFTUS: All right. Please note my exception to the Court's ruling on the punitive damages.

THE COURT: You may certainly do that.

MR. LOFTUS: And the willful and malicious --

THE COURT: You want to note your exception also, I assume.

MR. GORMAN: No, sir. I just want a point of clarification. I'm not sure I understand. The base judgment of whatever it was --

THE COURT: $7 million. Non-dischargeable. It's fiduciary.

MR. GORMAN: The punitive damages are?

THE COURT: Well, the punitive damages, I'm not going to rule that they are not dischargeable at this point. I would want to take further evidence to look behind the

record to determine that they're the appropriate amount and would be non-dischargeable.

MR. LOFTUS: I understand, Your Honor. Thank you.

THE COURT: All right.

MR. GORMAN: Your Honor, also on the docket today is the pre-trial on this matter. If I might suggest that we continue that over --

THE COURT: Well-taken.

MR. GORMAN: -- so I can discuss with counsel two aspects. One, whether to pursue the punitive damages, in light of having the $7 million non-dischargeable judgment; and, number two, as partial summary judgment, Plaintiff also prayed to have the 727 discharge denied -- also to determine whether the Plaintiff wishes to go forward with that, in light of the Court's ruling today. So I would ask to have that continued so we can --

MR. LOFTUS: It makes sense, Your Honor. I think the Court's next date is like the 11th.

THE COURT: 11th of January, at 9:30.

MR. LOFTUS: Should we put it on the Court's docket that day?

THE COURT: Yes. You may certainly do that. I think it's a good suggestion, gentlemen, so you can discuss the matter in light of my ruling.

MR. LOFTUS: Thank you, Your Honor.

THE COURT: You may also want to discuss the order at that time, so we can get the order entered, prior to that time, I mean. All right?

MR. LOFTUS: I'll prepare the order. Thank you, Your Honor.

THE COURT: All right, gentlemen.

(Whereupon, at approximately 10:35 o'clock a.m., the hearing in the above-entitled matter was concluded.)

CERTIFICATE OF REPORTER

I, William Finley, the stenographic reporter who was duly sworn to well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no interest in said proceedings, financial or otherwise, nor through relationship with any of the parties in interest or their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 29 day of December, 1993.

/s/_____
William L. Finley
Verbatim Reporter

No. 97-259 (2)

Supreme Court, U.S.
FILED
SEP 10 1997
CLERK

In The Supreme Court Of The United States

OCTOBER TERM, 19

In re: Ahmad Ali Massoud Ansari,
Debtor,

AHMAD ALI MASSOUD ANSARI,
Petitioner,

v.

REZA PAHLAVI and
MEDINA DEVELOPMENT COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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74 pp

PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding. Medina Development Company has no parent or subsidiary entities.

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11 U.S.C. §§ 523(a)(2) 1, 8, 10, 14
11 U.S.C. §§ 523(a)(4) 8, 10, 11
11 U.S.C. §§ 523(a)(6) 1, 8, 10, 14

STATUTES INVOLVED

11 U.S.C. § 523(a)(2) provides as follows:

(a) A discharge under Section 727, 1141, 1128(a) 1128(b), or 1328(b) of this title does not discharge an individual debtor from any debt --

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by --

(A) false pretenses, a false representation, or actual fraud . . .

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

OPINIONS BELOW

The findings of fact and conclusions of law of the Circuit Court of Fairfax County, Virginia, October 24, 1991, imposing sanctions on Ansari, are reprinted in the Appendix to this Brief at pages 2 to 18.[1]

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[1]References to the Appendix to this Brief will be (Resp. App. ___). References to the Appendix to the Petition will be (App. ___).

The findings of fact and conclusions of law of the Circuit Court of Fairfax County, Virginia, awarding punitive damages against Ansari, given from the bench on November 25, 1992 are reprinted in the Appendix to this Brief at pages 19 to 23.

I. STATEMENT OF THE CASE

A. The Petition Misrepresents the Proceedings in the Circuit Court of Fairfax County, Virginia.

Ahmad Ali Massoud Ansari ("Ansari") portrays himself as the hapless victim of a mere procedural default entered by the Circuit Court of Fairfax County, Virginia, and characterizes the $7,277,425.56 compensatory award and the $2,000,000 punitive damage award, as tantamount to a scrivener's error. To the contrary, the judgment of the Circuit Court of Fairfax County, Virginia resulted from a grueling proceeding bitterly contested by Ansari for almost three years.

In its opinion upholding the bankruptcy court's grant of summary judgment against Ansari, the United States Court of Appeals touched upon the extent of the

actual litigation in the Circuit Court of Fairfax County, Virginia. See, App. 8-9, Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 21 (4th Cir. 1997). The Court of Appeals noted in its opinion that long before entry of sanctions against Ansari, the state court proceedings had involved extensive discovery and numerous hearings in the state court and before a commissioner appointed to take Ansari's accounting, and that the focus of this effort had been to determine the extent of Ansari's defrauding of Pahlavi and Ansari's misappropriation of his funds. As the Fourth Circuit carefully noted, it was only when Ansari refused to obey the state court's orders that sanctions were entered against him. The Fourth Circuit went on to observe that in imposing sanctions, the Circuit Court of Fairfax County, Virginia, did not impose a fine, but rather referred the matter for extensive hearings before the commissioner, and ultimately assessed compensatory damages against Ansari based on "the exact amount that Ansari, as a fiduciary, was found to have misappropriated from Pahlavi." (App. 8; 113 F.3d., at 21).

Thereafter, the Circuit Court of Fairfax County conducted a two day hearing to consider whether to award punitive damages. The Circuit Court of Fairfax County considered Ansari's conduct under a standard requiring proof of misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others, heard extensive testimony, and resolved conflicts in the evidence based upon the credibility of the witnesses, including testimony by Pahlavi, Ansari, and other witnesses. The Fairfax County Circuit Court expressly found misconduct by Ansari, specifically a pattern of conduct that occurred practically from the outset of the relationship between Pahlavi and Ansari, and, based upon these findings, awarded punitive damages. (App. 9; 113 F.3d at 21.)

The litigation briefly summarized by the Fourth Circuit in its opinion arose from Ansari's violation of his express, written pledge to Pahlavi to act as his fiduciary, to keep records of funds entrusted to him, and to disclose them on demand. When Pahlavi requested an explanation from Ansari of the handling of his funds, Ansari evaded and confabulated. When Pahlavi persisted in his demands

for an accounting, Ansari retaliated by burying what remained of Pahlavi's property under millions of dollars of liens, and sought to intimidate Pahlavi with threats to involve hostile foreign powers.

When this conflict boiled over into litigation in the Circuit Court of Fairfax County, Virginia, Ansari escalated his tactics into a bitter, running warfare that embroiled the parties in three years of grueling litigation, amassing a record of 20 hearings before the Circuit Court of Fairfax County, Virginia, and 29 hearings before the commissioner appointed to take Ansari's accounting. The transcripts of these hearings exceed 6,500 pages. (See Declaration of Robert H.J. Loftus, Exhibit No. 54 to Motion for Summary Judgment, In the United States Bankruptcy Court for the Eastern District of Virginia, Resp. App. 24).

During these proceedings, Ansari's contempt for his obligations to Pahlavi spread to the trial judge's repeated orders directing Ansari to disclose his handling of Pahlavi's funds. After a two day hearing examining Ansari's defiance of the court's orders, at which it was shown that Ansari deliberately concealed records and

selectively destroyed others, and operated a maze of shell accounts throughout Europe and the United States that hemorrhaged funds into accounts controlled by Ansari, his friends and family, the trial court ordered Ansari's pleadings, and his astounding $40,000,000 counter suit, stricken.

The Fairfax County Circuit Court, in a meticulous fifteen page opinion, issued October 24, 1991 (Resp. App. p. 2) chronicled Ansari's blatant misrepresentations and contempt for the orders of the Court, a situation so egregious that the Court found Ansari's conduct compromised the integrity of the judicial process, to the extent that the Court had no alternative but to strike Ansari's pleadings.

Almost a year later, after 18 more hearings before the Commissioner designed to determine the status of Ansari's accounts, formal written exceptions and numerous hearings before the court, and a re-submittal of the matter to the commissioner, the Fairfax Circuit Court finally determined the misappropriation by Ansari amounted to $7,277,425.56, and entered a decree

on September 2, 1992 awarding judgment against Ansari in that amount.

On November 24 and 25, 1992, trial took place on Pahlavi's demand for punitive damages against Ansari. The Fourth Circuit noted that, contrary to Ansari's characterization of this hearing to the effect that "no pertinent non-dischargeability issues were actually litigated," the punitive damage hearing did not rely solely on the allegations of the Complaint, but delved into Ansari's conduct. At the conclusion of the two day hearing, the Court weighed the credibility of the witnesses and expressly found Pahlavi's evidence more credible, and found a pattern of misconduct, misrepresentation, self-dealing and outright fraud by Ansari that occurred from the outset of the relationship between Pahlavi and Ansari and awarded punitive damages in amount of $2,000,000. (Resp. App. 19). Ansari appeared at this trial, as he had through out the entire proceedings, and was represented by counsel.

As even Ansari concedes, it is clear that the Fairfax Circuit Court determined long before it imposed sanctions on Ansari that Ansari was Pahlavi's fiduciary,

and ordered him to account. (Pet. p. 8.) The Fourth Circuit so found (App. p. 7; 113 F.3d at 20), and further found that the proceedings before the state court resolved the question of Ansari's defalcation, both in the hearings before the commissioner, and the trial before the Circuit Court on the question of punitive damages. (App. 7-9; 113 F.3d at 20 to 21).

The judgment against Ansari was a "default" judgment in name only. All of the elements essential to a finding of non-dischargeability under the 11 U.S.C. § 523(a)(2), (4) and (6), were actually litigated and resolved against Ansari.

B. The Petition Misrepresents the Applicable Law.

There is no question in this case that the Court of Appeals for the Fourth Circuit was correct in finding that Virginia law controls the preclusive effects of Virginia judgments in federal courts, and Ansari concedes this point. (Pet. p. 6)

The controlling precedent from Virginia on the effect of a "default" judgment is Transdulles Center, Inc.

v. Sharma, 252 Va. 20, 472 S.E.2d 274 (1996). In Transdulles, the Virginia Supreme Court expressly rejected the position set forth in the Restatement (Second) of Judgments, § 27 cmt.e (1982), that default judgments have no collateral estoppel effect. To the contrary, the Virginia Supreme Court concluded that Virginia law does not support a blanket exemption from the application of collateral estoppel in the case of a default judgment. (Id.)

In Transdulles, the Virginia Supreme Court held that a judgment, based upon testimony and exhibits ex parte, where the defendant did not even appear for trial, was entitled to collateral estoppel effect, as it constituted actual litigation of the issues presented to the court.

The authority cited by Ansari for the proposition that a "default" judgment is not sufficient to satisfy the actual litigation requirement, is totally inapposite. See, e.g., Hildebrand v. Kugler (In re Kugler), 170 B.R. 291, 300 (Bankr. E.D. Va. 1994), M & M Transmissions, Inc. v. Raynor (In re Raynor), 922 F.2d 1146 (4th Cir. 1991); Bell v. Douglas, 184 B.R. 301 (N.D. Ill. 1995). None of these cases apply Virginia law, much less the clearly articulated rule of Transdulles. Moreover, each involved

situations of "pure" default where the court made no independent investigation, the debtor did not know of the proceedings, and no evidence was presented. M & M Transmissions, Inc. (Id.) (default judgment entered because debtor failed to appear and had no notice and no evidence presented on fraud issue); Hildebrand (Id.) (judgment entered based upon request for admissions and summary judgment motion never served on debtor); Bell (Id.) (judgment based solely upon failure to respond to request for admissions found inadequate under Iowa law.)

As the United States Court of Appeals for the Fourth Circuit noted in discussing Transdulles, the evidence presented in the case at bar vastly exceeded that deemed sufficient by the Supreme Court of Virginia to constitute actual litigation such as to permit collateral estoppel effect. All of the key elements essential for the application of collateral estoppel under 11 U.S.C. § 523 were actually litigated in the state court proceedings, e.g., that Ansari was Pahlavi's fiduciary, that he misappropriated over $7,000,000 from Pahlavi and that

this misappropriation arose from a long standing pattern of defalcation, misrepresentation, and self-dealing.

Ansari fails to deal with the well-settled law that where a fiduciary has been found to be short in his accounts, or has failed to properly account for fund entrusted to him, this amounts to a defalcation under 11 U.S.C. § 523(a)(4). In re Niles, 106 F.3d 1456, 1460 (9th Cir. 1997); Quaife v. Johnson, 4 F.3d 950, 955 (11th Cir. 1993) (citing Central Hanover Bank & Trust, Co. v. Herbst, 93 F.2d. 510, 512 (2nd Cir. 1937 (Learned Hand, J.)). Ansari completely fails to show how he accounted for the funds entrusted to him, or how he was denied an opportunity to do so. Ansari's defalcation was plainly made out and the judgment is nondischargeable.

C. Reasons for Denying the Writ.

1. The Petition Presents No Important Question of Federal Law.

The case brought here by Ansari's Petition involves only the application of a state rue of

decision to the facts and circumstances of this case, and raises no important federal question. In Pahlavi v. Ansari (In re Ansari), supra, the United States Court of Appeals for the Fourth Circuit applied Virginia principles of collateral estoppel to a Virginia judgment in the context of a dischargeability issue under bankruptcy law. Ansari presents no conflict among the United States Courts of Appeals or between those courts and a state court of last resort. Ansari does not show how this decision is of sufficient moment to warrant review by this Court. The case presented in this decision is confined to the relatively rare problem presented by a debtor who seeks to discharge in bankruptcy the consequences of his obstruction of a judicial proceeding.

Moreover, as this case arises from the application of Virginia law, Ansari fails to carry his burden of showing the compelling reasons required for review of decisions by courts of appeals based upon local law. The courts of appeals are generally considered expert tribunals of the laws of the states within their circuits. Butner v. United States, 440 U.S. 48, 57-58 (1979); Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 499-500 (1985).

2. The Petition Presents No Novel Issue of Unsettled Law.

With its decision in Pahlavi v. Ansari (In re Ansari), supra, the Fourth Circuit joined the growing consensus of the courts of appeals that have held that where a party appears and litigates a matter, a default judgment subsequently entered for discovery violations can have collateral estoppel effect in a later case. See, Gober v. Terra + Corporation (In re Gober), 100 F.3d 1195, 1205-06 (5th Cir. 1996); Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir. 1995); FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir. 1995). Ansari's position that the Bankruptcy Code should afford a refuge for those litigants that choose to defy the authority of the judiciary to manage the cases before it, has been dealt with by the courts of appeals in clear and certain terms, and their opinions are not in need of clarification.

3. The Judgment Must be Sustained on Other Grounds.

On certiorari, this court may affirm the result on different grounds if fully supported by the record. Board of Airport Comm'r v. Jews for Jesus, 482 U.S. 569, 572 (1987). Although the bankruptcy court clearly recognized that the state court found wilful and malicious conduct by Ansari (App. 32), it denied the motion for summary judgment on this point, apparently in the belief that it was required to hear more evidence. (App. 33-34). The record is plain that the state court judgment amounted to a finding of wilful and malicious conduct, and fraud, and the judgment is nonchargeable under 11 U.S.C. § 523(a)(2) and (6).

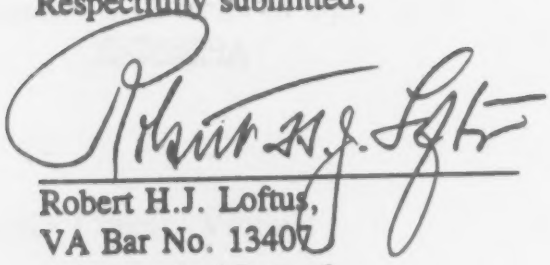
"Wilful conduct" for the purposes of Section 523(a)(6) is deliberate or intentional conduct. The debtor need not be shown to have an intent to harm his creditor, but only to have performed an act which would necessarily harm the creditor. "Malicious" means "wrongful, and without just cause or excuse." Stanley v. First Nat'l Bank, 66 F.3d 664, 667 (4th Cir. 1995). As

the bankruptcy court plainly recognized, the Fairfax County Circuit Court expressly found that Ansari made intentional misrepresentations designed to mislead Pahlavi concerning Ansari's use of Pahlavi's funds, knowingly used Pahlavi's funds for unauthorized activities, including, but not limited to, improper borrowing and wrongful encumbering of Pahlavi's property and engaged in a pattern of wilful concealment of financial activities amounting to self-dealing. (Resp. App. 19 to 23). The verdict of the state court clearly established that Ansari's conduct was wilful and malicious, and fraudulent, and discharge of the judgment must also be denied under 11 U.S.C. § 523(a)(2) and (6).

II. CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari to review the opinion and order of the United States Court of Appeals for the Fourth Circuit should be denied.

Respectfully submitted,



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NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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RE: Medina Development Company, et al. V. Ahmad Ali Massoud Ansari, et al.; Chancery No.115845

Ahmad Ali Massoud Ansari v. Reza Pahlavi, et al.

At Law No.97435

Dear Counsel:

This matter involves two cases, Medina Development Company, et al. v. Ahmad Ali Massoud Ansari, et al., Chancery No.115845, and Ahmad Ali Massoud Ansari v. Reza Pahlavi, et al., At Law

No.97435. Both cases involve many of the same parties, principals, and instrumentalities at issue.

In the chancery case, the Bill of Complaint contains allegations of various breaches of fiduciary duty, breach of contract, slander of title, fraud and a prayer for an accounting. It is further alleged that Mr. Ansari, the defendant in the chancery matter, was a fiduciary of the complainant, Reza Pahlavi ("Pahlavi"), the son of the late Shah of Iran. Mr. Ahmad Ali Massoud Ansari ("Ansari") is a citizen and resident of the Commonwealth of Virginia, who allegedly served as Mr. Pahlavi's financial consultant. Medina Development Company ("MDC") is alleged to be a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Georgia. In the Bill of Complaint, there are allegations that Mr. Pahlavi and MDC were injured by

the actions of Mr. Ansari and Mid-Continental Bank and Trust ("MB&T"). No specific amount of damages is prayed for in the chancery case. However, the breadth of the allegations suggests that many millions of dollars are involved in the subject transactions.

In the law action, Mr. Ansari has sued Mr. Pahlavi and MDC for breach of contract, fraud, misappropriation of stock, declaratory judgment as to the ownership of the stock, abusive process, defamation, slander, and tortious interference with prospective economic advantage. Mr. Ansari demands judgment in the amount of ten million dollars in compensatory damages and ten million dollars in punitive damages.

The Court has disposed of several counts in the law case. Count V of the law case, which alleged constructive fraud, was dismissed when Mr. Pahlavi's

demurrer was sustained. Also, summary judgment was granted in favor of Mr. Pahlavi for Count VII, which alleged interference with prospective contractual relationship or business expectancy, and partial summary judgment was granted for breach of contract claims in Count I that went beyond the pertinent statute of limitations.

Various discovery matters have been heard by this Court since May of 1990. Several orders and decrees have directed Mr. Ansari and MB&T to comply with this Court's rulings regarding discovery. The instant motion for sanctions involves alleged violations of this Court's orders and decrees by Mr. Ansari and MB&T.[2]

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[2]Except where the context suggests otherwise, this opinion will use "decree" and "order" interchangeably.

All parties have agreed that the evidentiary hearing should encompass both the law and chancery cases to avoid the necessity of a separate hearing for each case. Therefore, the Court has consolidated the law and chancery cases for purposes of determining the motion for sanctions.

The posture of these cases is such that neither can go forward to trial until the Court can be assured that there has been compliance with its discovery orders and decrees. An important aspect of these cases involves the disclosure and production of numerous documents that pertain to many complex financial transactions spanning nearly a decade. Mr. Ansari's position, which has been repeatedly asserted in Court, is that many of the documents involving the subject transactions have been destroyed at the direction of Mr. Reza Pahlavi. Mr.

Pahlavi, by counsel, has denied giving any such instructions to Mr. Ansari. Mr. Pahlavi argues that in order for him to prove his case against Mr. Ansari and to defend against Mr. Ansari's allegations all existing documents associated with the subject transactions must be produced.

The complexity of these transactions and their number would make it extremely difficult for a litigant to either prove or defend against claims without the necessary documentation for the trier of fact to understand the transactions involved.

A. Findings With Regard to Non-Compliance of Discovery Orders and Decrees

1. Medina Account Records

One of the more serious allegations of non-compliance with the Court's prior orders and decrees involves the discovery of Med ma account records in the basement of Mr. Ansari's house. On numerous occasions before this Court, counsel[3] for Mr. Ansari has represented that financial records had been destroyed at the request of Mr. Pahlavi. Not only has counsel for Mr. Ansari made these representations, but Mr. Ansari himself has sworn under oath that the representations are true. For example, the Court notes that in Plaintiff's answers to the Defendant's first set of interrogatories, submitted July 10, 1990, there is a representation that all records related to investments and re-investments by Mr.

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[3]This is a reference to Mr. Ansari's prior counsel, Mr. Tomar, who was allowed to withdraw.

Ansari had been destroyed. In his response to Interrogatory Number 4, Mr. Ansari states in pertinent part that" . . . Dr. Kasrai, president of MB&T, was ordered by Mr. Pahlavi to destroy all unnecessary documents." (Answers of Respondent Ahmad Ah Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi at page 2.) With regard to the discovery requests to MB&T, the answers were the same.

Despite Mr. Ansari's representations that these documents had been destroyed, on February 20, 1991, he told a completely different story. First, Mr. Ansari acknowledged that indeed American bank records for Medina did exist. Next, he stated that Mr. Shirzadi, former vice-president of Medina, had kept statements, records, and canceled checks from the banks where Medina maintained accounts. (February 20, 1991,

Deposition of Ahmad All Massoud Ansari at pages 25, 28.)

Mr. Ansari had knowledge of these records yet had repeatedly asserted before the Court that no such records existed. He also has stated that he did not know where any of the records were located. (Supplemental Responses of Respondent Ahmad All Massoud Ansari to First Request for Production of Documents of Complainant Reza Pahlavi.) However, he knew that Mr. Shirzadi had been responsible for keeping these records, but never inquired of Mr. Shirzadi, the former vice-president of Med ma, as to whether Mr. Shirzadi had the records. (February 20, 1991 Deposition of Ahmad All Massoud Ansari at page 26.) As it turns out, the documents were in Mr. Ansari's basement all along. Mr. Shirzadi testified that he had placed the documents there

sometime in 1989. (Transcript of July 16, 1991 at page 116.)

The Court does not find Mr. Ansari's explanations for this turn of events to be credible.

II. Accounts at the First National Bank of Atlanta

Given Mr. Ansari's position that documents covering many of the financial transactions at issue had been destroyed, it was incumbent upon Mr. Ansari to give complete answers to the interrogatories concerning these transactions so that existing documents could be found. Mr. Ansari's failure to reveal the existence of the First National Bank of Atlanta accounts amounts to a serious breach of the discovery orders. The first set of interrogatories requested the names and addresses of all financial institutions with which MB&T had maintained any financial or correspondent relationship. Mr. Ansari's

answer to that interrogatory failed to disclose the existence of Mid-Continental Holding Company, which was a controlled entity of MB&T. Mid- Continental Holding Co. was formed in 1986 to run MB&T's business. (March 6, 1991, Deposition of Bijan Kasrai, Ph.D. at pages 305, 307, 310, 324). Mid- Continental Holding Co. had two accounts at the First National Bank of Atlanta. Neither of these accounts was revealed in any discovery response. No documentation or other record of these accounts was ever produced. (Responses of Respondent Ahmad Ali Massoud Ansari to First Request for Production of Documents of Complainant Reza Pahlavi number 27 at page 7; Response of Respondent Mid- Continental Bank and Trust (West Indies) Limited to Complainant Reza Pahlavi's First Request for Production of Document number 3 at page 2.)

Mr. Ansari explains his non-compliance to the Court by contending that he was never an officer or employee of MB&T, and by denying that he ever operated any part of MB&T (See Post Sanctions Hearing Brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank & Trust Corporation at 3 and 24) and, therefore, was never privy to this information. However, Mr. Ansari responded to the discovery request on behalf of MB&T as chairman of the board of MB&T. As chairman, Mr. Ansari received compensation of $20,000 in 1989. (Answers of Respondent Ahmad Ali Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi, number 14 at page 6.)[4] Furthermore, the discovery

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[4]This further undercuts Mr. Ansari's argument that the Court must consider MB&T and Mr. Ansari's answers separately. Technically, this is correct and the Court has proceeded In this manner. However, the distinction has

answers show that Mr. Ansari held fifty percent of the shares in Mid-Continental Holding Co. during the relevant time period. (Answers of Respondent Ahmad Ali Massoud Ansari to First Set of Interrogatories of Complainant Reza Pahlavi, number 16 at page 7.) As chairman of the board of MB&T and, designated respondent Mr. Ansari was responsible for fully answering the interrogatory and was in a position to produce documentation of these accounts when first

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somewhat been blurred throughout this case because Mr. Ansari has answered for MB&T as its chairman of the board while simultaneously answering for himself personally. Therefore, the Court considers information Mr. Ansari has in his personal capacity to be knowledge he possesses in his corporate capacity. Similarly, the knowledge which he possesses as a plaintiff in the law case, is knowledge which he possesses as a defendant in the chancery case.

requested. Even if the Court assumes that Mr. Ansari had no personal knowledge of MB&T operations, all he had to do was to ask Dr. Kasrai who had the requested information. Moreover, the Court is not satisfied with Mr. Ansari's explanation that he "forgot" that an account was ever maintained with First National Bank of Atlanta. (Post Sanctions Hearing Brief of Ahmad All Massoud Ansari and Mid-Continental Bank & Trust Corporation at 11.)

To wait until the eleventh hour and to now assert that nearly all documents have been received by Mr. Pahlavi does not excuse Mr. Ansari's failure to respond in a timely manner. The most recent Court order for production was entered on January 14, 1991, which compelled Mr. Ansari and MB&T to produce "all non-Swiss records

...by January 25, 1991 . . . " (January 14, 1991, Order Compelling Discovery.)

First National Bank of Atlanta keeps its records for only seven years. As a result of the delay in revealing these accounts, Mr. Pahlavi is unable to retrieve account records beyond the seven years.

III. Union Bank, Switzerland

In response to paragraph number 27, of the first production request to Ansari and paragraph number 3 of the first production request to MB&T, Mr. Ansari states in part that he does not know whether certain records of MB&T had been destroyed. These documents were also requested by subpoena duces tecum. With regard to this production request, MB&T states that they will produce "if available." (Response of Respondent Mid-Continental Bank and Trust (West Indies) Limited to Complainant

Reza Pahlavi's First Request for Production of Documents at page 2.)

Mr. Ansari has stated at deposition that these records were not destroyed and that Dr. Kasrai, president of MB&T, had them. This record is replete with the difficulties in obtaining bank account information from the Union Bank of Switzerland and other foreign banks. Yet, Mr. Ansari has misled the court by his responses, and MB&T has failed to produce the documents in a timely manner. If he purports to be answering discovery either for himself or on behalf of MB&T, as he has done throughout this litigation, Mr. Ansari has a duty to make reasonable inquiry before responding, and then to respond honestly and completely in a timely manner. In these cases, that was not done.

More inconsistencies by Mr. Ansari can be found in his post sanctions hearing brief of August 1, 1991. In that brief, Mr. Ansari states that "there is not now nor have there ever been, bank accounts of any of the Defendants at the Union Bank of Switzerland." (Post Sanctions Hearing Brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank and Trust Corporation at 15.) However, this is contradicted by Mr. Ansari's deposition testimony of February 20, 1991. At the deposition he said that $200,000, obtained from National Bank of Washington had been used to pay back an MB&T loan taken through the Union Bank of Switzerland (Feb uar,' 20, 1991 deposition of Ahmad Ali Massoud Ansari at 31.[5])

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5 The relevant portion reads:

Q. So the $200,000 that you paid back out of the funds borrowed from the National

IV. Merrill Lynch Account Statements

Mr. Ansari's financial records were requested under paragraph 56 of the First Request for Production. The request included the production of account statements of Merrill Lynch. Mr. Ansari has produced account statements only for the period from 1981 to September 1987.

Lauren Brueggen, a loan officer at First Fidelity Mortgage Corporation, testified that Mr. Ansari applied for a loan to refinance his home around October of 1990. (July 16, 1991 hearing, transcript page 75.) Mr. Ansari

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Bank of Washington went to pay back a loan arranged by Dr. Kasrai.

A. Yes, through Union Bank of Switzerland.

Q. And in whose name was this loan taken, MB&T?

A. Yes.

submitted a number of his Merrill Lynch monthly statements to Ms. Brueggen in support of his application for the loan.

Judge Stevens ordered production of these statements by order dated July 9, 1990. A subsequent order dated January 14, 1991, was entered ordering the same documents to be produced. Mr. Ansari has possession of these documents. They were not produced in a timely manner by Mr. Ansari despite orders of this Court to do so.

V. Kredietbank Luxemburg Records

MB&T was ordered to produce documents covering Kredietbank Luxemburg and Grindley's Bank records by order of Judge Stevens (June 29, 1990, Order Denying Motion to Quash Service of Process) in the law

production request to Ansari in the chancery case. Also paragraph number 3 of the first production request to MB&T required production of these documents. The Courts decree of January 14, 1991, ordered certain information be provided if Mr. Ansari claimed documents were "unavailable."

As in other instances, Mr. Ansari has stated that he did not have these documents and that they have been disposed of or destroyed. (See for example Ansari's deposition at page 23). The documents were never produced in a timely manner despite the subpoena duces tecum. Judge Stevens' order of June 29,1990 required MB&T to produce all documents by July 11, 1990. The subpoena had been directed to Mr. Ansari as chairman of the Board of Directors of MB&T. On July 17, 1991, over a year later, Mr. Ansari testified that records were not

destroyed after Mr. Pahlavi brought charges in Switzerland. (Deposition of Ahmad All Massoud Ansari at page 28.) Mr. Ansari also testified that Dr. Kasrai, president of MB&T should have the records. (July 17, 1991 hearing at page 28.) Mr. Ansari's response to counsel's questions on July 17, contradicts his prior response given at his deposition in February of 1991 (Deposition of Ahmad Ali Massoud Ansari at page 23.) Mr. Ansari's deposition response was incomplete and misleading. Mr. Ansari's deposition response was contradicted further by Dr, Kasrai who stated at his deposition that he was never ordered to destroy records and in fact never destroyed any. (March 6, 1991, Deposition of Bijan Kasrai at pages 140, 193, 204.) With Mr. Ansari's later admissions and Dr. Kasrai's deposition testimony, the Court can only conclude that some records

did exist and that this fact was known to Mr. Ansari. Mr. Ansari had reason to know at the time that he responded to the request for production that Dr, Kasrai, an officer of MB&T, had the documents.

VI. E. F. Hutton Records

Production of E. F. Hutton records is requested by paragraph number 27 of the first request for production to Ansari and paragraph number 3 of the first request for production to MB&T. These documents also were requested by subpoena duces tecum in the law case.

As before, Mr. Ansari has responded that these\ documents either do not exist or that he does not know where they are if they do exist. Dr. Kasrai has testified that Certain telexes of E. F. Hutton transactions do exist. (March 6, 1991, Deposition of Bijan Kasrai at page 137.) As noted before, this request was covered by a subpoena

duces tecum to MB&T in care of Mr. Ansari. To date, these documents have not been produced. No credible explanation has been provided to the Court as to why MB&T has not produced these documents. Moreover, Mr. Ansari's responses to discovery in his own behalf and on behalf of MB&T are deceptive and misleading.

The E. F. Hutton documents are material to both the chancery and law cases. In his law claim, Mr. Ansari is suing for commissions which would include monies due him for transactions involving E. F. Hutton. One of the issues in the case will be whether these investments were prudent ones. Moreover, these records are critical in order for there to be a proper accounting.

VII. Bank Paribus. New York

Records of Bank Paribus of New York were requested by paragraph 27 the first request of production

to Ansari and the first request of production to MB&T. These documents were subject to a subpoena duces tecum in the law case. Also, account information was requested by interrogatories number 5 and 6 at the first set of interrogatories to Mr. Ansari and MB&T, respectively.

Although the existence of the Bank Paribus account was revealed in a timely manner, no explanation has been given for the nonproduction of these documents. If the documents were destroyed, then Mr. Ansari had an obligation to tell under what circumstances they were destroyed or where they could be found if they were not destroyed. (January 14, 1991, Order Compelling Discovery at pages 3 and 4.)

VIII. Mid-Continental Financial Services. Inc.

Documents for Mid-Continental Financial Services, Inc. were requested by paragraph 27 of the first

request for production to Ansari and paragraph number 3 of the first request for production to MB&T.

Mid-Continental Financial Services Inc. was set up as an agency of MB&T for operations in England. Mid-Continental Financial Services was 80% or 90% owned by MB&T. (March 6, 1991, Deposition of Bijan Kasrai at pages 313 through 314.) Although MB&T has control over Mid-Continental Financial Services, it is not clear that Mid-Continental Financial Services possessed any records relating to Medina or Pahlavi. Therefore, this request cannot be the subject of sanctions until it can be determined whether documents relating to this litigation are in the possession of Mid- Continental Financial Services, Inc.

B. Applicable Legal Standards for AwardIng Sanctions

The Court finds that Mr. Ansari and MB&T have\ failed to comply with various orders and decrees for discovery, and that in some instances these failures were willful. Mr. Pahlavi has argued that the sanction of dismissal in the law case and default judgment in the chancery case are the only appropriate remedies.

In National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976), a case similar to this one, the U.S. Supreme Court held that the sanction of dismissal was appropriate. In that case, the U. S. Supreme Court upheld a District Court's dismissal of a party's action for failure to timely answer written interrogatories as ordered by the District Court. The District Court had relied on Rule 37 of the Federal Rules of Civil Procedure. There are marked similarities between

Rule 37 and Rule 4:12 of the Rules of the Supreme Court of Virginia.

The parties have not cited any Virginia cases similar to this one. However, other jurisdictions have established standards for determining when extreme sanctions are appropriate. Mr. Ansari references a four-part test on page 21 of the post- sanctions hearing brief of Ahmad Ali Massoud Ansari and Mid-Continental Bank and Trust Corp. This test appears to be taken from Mutual Federal Savings & Loan v. Richards & Associates 872 F.2d 88, 92 (4th Cir. 1989). Under Mutual Federal, the four part test consists of:

> (1) whether the noncomplying party acted in bad faith; (2) the amount of prejudice his noncompliance

> caused his adversary, which necessarily includes an inquiry into the materiality of the evidence he failed to produce; (3) the need for deterrence of the particular sort of noncompliance; and (4) the effectiveness of the less drastic sanctions.

Id. citing to Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 503-04 (4th Cir. 1977), cert. denied 434 U.S. 1020 (1978). Assuming that the four-part test is appropriate, the Court finds that the ultimate sanctions of dismissal and default judgment are appropriate.

Mr. Ansari has misled the Court during the entire discovery process. Additionally, he has willfully failed to comply with orders issued by the Court. The Court finds that this satisfies any bad faith standard or requirement referenced in Mr. Ansari's brief.

Secondly, Mr. Ansari notes that the Court must consider the amount of prejudice resulting from non-compliance. While the Court recognizes Mr. Ansari' S compliance in producing numerous documents, the Court also recognizes that other documents essential to reconstructing the complex financial transactions were not timely produced. These documents are like pieces of a puzzle. Without full production, there are only fragments of what transpired and no means by which the whole "picture" can be constructed.

One example of this involves Mr. Ansari's ability to change his story over time. in Mr. Ansari's answer to interrogatory number 21 of the first set of interrogatories of complainant Reza Pahlavi, he states under oath that the Obses shares were held by him as Mr. Pahlavi's nominee. However, at the hearing on July 17, 1991, Mr. Ansari testified that he held the shares for "the system." This directly contradicts his prior discovery response. To the Court's knowledge, Mr. Ansari has never supplemented his response to the interrogatory to clarify his\ relationship with the Obses Establishment. Mr. Ansari's belated revelation presents Mr. Pahlavi with another issue that was supposedly settled by virtue of the interrogatory response of over a year ago.

Another example of this is the failure of Mr. Ansari to reveal the documents concerning First National

Bank of Atlanta. Mr. Ansari failed to disclose the existence of these accounts. Because these accounts did not come to Mr. Pahlavi's attention until late in the process, a number of related documents have been purged from First National Bank's system. These documents may be forever lost for Mr. Pahlavi. Additionally, Mr. Pahlavi has been prejudiced by the expense and time that counsel has had to spend in Court. Orders and decrees have been entered and ignored by Mr. Ansari. Given the misrepresentations Mr. Ansari has made to the Court in the past, the Court does not believe he will ever comply with this Court's discovery orders. To continue these cases would cause undue expense to all parties involved.

The third part of Mr. Ansari's test calls for a look at the need for deterrence of the particular sort of non-compliance. In this case the non-compliance has been of

an egregious nature. It must be addressed and cannot be allowed by the Court if any form of efficiency is to be maintained throughout the judicial process.

This leads the Court into the fourth prong of Mr. Ansari's argument, that is the potential effectiveness of less drastic sanctions. This Court has given prior warnings and has entered prior discovery orders covering the matters at issue. At this juncture, the Court cannot be assured of full compliance with discovery, and Mr. Pahlavi cannot be assured a fair trial. Fairness of the process in these particular cases rests upon a presumption of good faith on Mr. Ansari's part. Although Mr. Ansari has claimed that many of the documents requested have been destroyed, he nonetheless has refused to fully and completely answer interrogatories and to comply with requests for production which could lead to the discovery

of existing documents in the hands of other persons and institutions. Furthermore, late compliance with his responsibilities has caused undue delays in obtaining documents from sources on foreign soil and In locating other discoverable matters. Viewing the case from that posture, the integrity of the process has been compromised by Mr. Ansari's bad faith.

Mr. Ansari argues that the actions of MB&T are separate from his own actions. However, the discovery in the law case was directed to MB&T in care of Mr. Ansari, Chairman of the Board of Directors. Mr. Ansari was responsible for complying with the request. Mr. Ansari, the plaintiff In the law case, has caused MB&T, a non-party, to violate discovery orders.

A plaintiff, by his actions or inactions, cannot be allowed to obstruct discovery directed to a non-party.[6]

Conclusion

In any document driven case, compliance with discovery is essential. In the instant case, Mr. Ansari has repeatedly failed to respond to discovery requests and to answer subpoenas duces tecum. Mr. Ansari's excuses for his failure to comply have changed throughout this litigation. After consideration of the orders and decrees, the evidence and oral argument at the sanctions hearing, the numerous briefs submitted, discovery requests and responses, and representations made in prior proceedings,

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[6]Rule 4:1 2(b)(2) allows a court to sanction a party who fails to obey an order to provide or permit discovery, and to enter such orders in regard to such failure as are just. The Court believes this rule is broad enough to encompass Mr. Ansari's actions on behalf of MB&T.

the Court finds that Mr. Ansari and MB&T have repeatedly violated this Court's discovery orders and decrees. Moreover, the Court finds that Mr. Ansari misled this Court throughout this litigation and has acted with a lack of diligence and good faith. While no single discovery violation standing alone may warrant dismissal and default judgment, taken together these violations indicate a pattern of concealment and haphazard compliance that is unacceptable.

Mr. Ansari's actions have had an irreversible impact on the course of this litigation. Under the applicable case law, and the broad discretion given to trial courts in determining what sanctions to impose, this Court finds that the sanctions of dismissal in the law case and judgment on the pleadings in the chancery case, are appropriate. Woodbury v. Courtney, 239 Va. 651,654

(1990); First Charter Land Corp. v. Middle Atl. Dredging, Inc., 218 Va. 304 (1977).

Based upon the foregoing, the Court hereby Orders and Decrees that the Law case be dismissed and that default judgments be entered against the defendants, Mr. Ansari and MB&T in the Chancery case. Mr. Loftus will please draft an Order reflecting the Court's ruling and submit it to Mr. Lubin for his endorsement.

Sincerely,

Marcus D. Williams

MDW\DJ\cw

cc: Kathleen McTeague, Esq.
Robert L. Brager, Esq.
Robert E. Scully, Jr., Esq.

Geoffrey D. Gitner, Esq.

Richard Tomar, Esq.

William F. Krebs, Esq.

PARTIAL TRANSCRIPT

Fairfax, Virginia

Wednesday, November 25, 1992

The trial commenced at 9:15 o'clock, a.m.

BEFORE:

The Honorable Marcus D. Williams, Judge

APPEARANCES FOR THE COMPLAINANT:

ROBERT H. J. LOFTUS, ESQ.

Miles & Stockbridge

11350 Random Hills Road

Fairfax, Virginia 22030

Reported by: Mindy Belcher

FOR THE DEFENDANT:

ROBERT LUBIN, ESQ.

1211 Connecticut Avenue, N.W.

Suite 620

Washington, D.C. 20006

PROCEEDINGS

(Thereupon, the witnesses were sworn.)

(Thereupon, the court reporter was sworn.)

. .

THE COURT: I recognize that this has been a long two days. So I will give a brief summary of my decision in this case.

The legal standard I'm applying for the punitive damages is as follows: Proof of misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others. That is the language quoted in Jordan versus Suave, 219 Virginia 448.

I believe that is the applicable standard that must be met in this case. As an aside, the opinion in that case does refer to criminal indifference as being a sub-part to this standard.

It is also clear that the purpose of punitive damages is, of course, not compensation, but to punish the wrongdoer. So with this in mind, the Court now turns to the evidence presented in this case.

First, the Court looks to the credibility of the witnesses to determine which version of what was testified to is persuasive. Obviously, there are diametrically diametrically positions on what occurred during almost ten years of transactions.

The Court recognizes some recollections may have dimmed over that time period. But the Court has, nonetheless, been able to ascertain the relative credibility of the witnesses.

And the principal witnesses in this case, of course, were Mr. Wagner, Mr. Pahlavi, and Mr. Ansari. On the evidence presented, I find Mr. Wagner's and Mr. Pahlavi's evidence to be more credible than Mr. Ansari's.

I further find that the misconduct complained of here was not of an isolated single transaction, but instead was a pattern of conduct that occurred practically from the outset of the relationship between Mr. Pahlavi and Mr. Ansari.

Some of Mr. Ansari's conduct can be described as willful concealment of financial activity, supposedly undertaken on behalf of Mr. Pahlavi.

I find that Mr. Ansari knowingly gave false reassurances that all was well with Mr. Pahlavi's investments when, in fact, all was not well. Further, Mr. Ansari intentionally misled Mr. Pahlavi concerning his investments and his activities.

I find that Mr. Ansari engaged in transactions that were not authorized by his principal. Mr. Ansari stepped beyond the bounds of his authority to borrow on behalf of Mr. Pahlavi and that he wrongfully encumbered his property.

Mr. Ansari knew he had no authority to act in this manner. These unauthorized activities were not for Mr. Pahlavi's benefit but were for the benefit of Mr. Ansari's own interests.

I find that Mr. Ansari's conduct goes beyond mere negligence. The findings I make are based on the consideration of all of the evidence presented. What I have just summarized begins the summary.

I also find that -- or my findings are based on matters which occurred prior to July 1, 1988. The so-called cap on punitive damages would not appear to be applicable in this matter.

Using the standard I announced earlier, I find that Mr. Ansari's conduct warrants an award of punitive damages in the amount of $2 million in favor of Mr. Pahlavi. I am not going to award any punitive damages against MB&T. That is the judgment of the Court.

Mr. Loftus, you prepare the order, please.

MR. LOFTUS: Yes, I will, Your Honor. And I will be here on December 4th. Would it be appropriate to notice it for the 4th?

THE COURT: That's my next civil date, right?

THE CLERK: Yes.

THE COURT: Yes, sir. You can do that for now.

MR. LOFTUS: Thank you, Your Honor. I will draft the order and submit it to Mr. Lubin as soon as possible.

THE COURT: All right. Thank you. The Court is adjourned.

(Thereupon, at 7:30 o'clock, p.m., the trial in the above-entitled matter was concluded.)

CERTIFICATE OF REPORTER

I, Mindy Belcher, do hereby certify that the testimony of the witness in the foregoing trial was taken by me and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the requested excerpt of testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

_____

Mindy Belcher, Court Reporter

Brian F. Kenney, Esquire
Virginia Bar #23199
Robert H. J. Loftus
Virginia Bar #13407
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, Virginia 22030
(703) 273-2440

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	
	)	
	)	
AHMAD ALI MASSOUD ANSARI,	)	Case No. 93-11245-AB
Debtor.	)	(Chapter 7)
	)	
	)	
REZA PAHLAVI and MEDINA DEVELOPMENT COMPANY,	)	
	)	
	)	
Plaintiffs,	)	
	)	Adversary Proceeding
v.	)	No. 93-1183
	)	
AHMAD ALI MASSOUD ANSARI,	)	
	)	
Defendant.	)	

DECLARATION OF ROBERT H. J. LOFTUS

Pursuant to 28 U.S.C. 1746, I, Robert H. J. Loftus, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I represented Reza Pahlavi and Medina Development Company throughout the proceedings in two

cases in the Circuit Court of Fairfax County, Virginia, styled Medina Development Company and Reza Pahlavi v. Ahmad Ali Massoud Ansari and Mid-Continental Bank & Trust, (West Indies) Ltd., Chancery No. 115845 and Ahmad Ali Massoud Ansari v. Reza Pahlavi and Medina Development Company, Law No. 97435, and have personal knowledge of the matters set forth in this affidavit.

2. The exhibits attached to the Brief in Support of Plaintiffs' Motion for Partial Summary Judgment are true and correct copies of pleadings, orders, decrees, transcripts, exhibits, depositions, and other parts of the record, or portions thereof, in the above-styled litigation.

3. Between February and October 1991, eleven hearings occurred before Henry Mackall, Commissioner, and the transcripts of those proceedings exceed 1,500 pages. Between January 1992 and May 1992, 18 more hearings took place before the Commissioner, and the transcripts thereof exceed 3,000 pages. As stated by the Commissioner, (See Exhibit 52, p. 8 and Exhibit 33, p.3), the record of the proceedings before the Commissioner fills six large boxes.

4. At least 20 hearings occurred before the Circuit Court of Fairfax County, the transcripts of which exceed 2,000 pages as listed on the attached Exhibit "A'.

5. That Ansari appeared both in person, or by counsel, at all of the hearings before the Commissioner and the Court

I HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS CONTAINED IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Executed this 7th day of October, 1993.

c: \ansari\rhjldecla

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[1]ERROR in this Hearing: Actually should read:

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No. (3) 97-259

Supreme Court, U.S.
FILED
SEP 24 1997
CLERK

In The
Supreme Court of the United States

October Term 1996

In re: Ahmad Ali Massoud Ansari,
Debtor,

AHMAD ALI MASSOUD ANSARI,
Petitioner,

v.

REZA PAHLAVI,
MEDINA DEVELOPMENT COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Introduction

Ansari, by counsel, submits this Reply in order to correct a number of misstatements set forth in the Respondents' Brief in Opposition. Ansari argues that the Respondents'' inability to provide support in the record for many of their factual assertions demonstrates the lack of "actual litigation" over the issues essential to a finding of nondischargeability, and, in turn, demonstrates the lower courts' error in ruling in the Respondents' favor under collateral estoppel.

Statement of the Case

1. The Respondents state that

> When Pahlavi persisted in his demands for an accounting, Ansari retaliated by burying what remained of Pahlavi's property under millions of dollars of liens, and sought to intimidate Pahlavi with threats to involve hostile foreign powers.

Brief in Opposition at 4-5.

These assertions are incorrect, as follows. First, Respondent Pahlavi himself testified that he never sought an accounting prior to the commencement of the Fairfax Court litigation. J.A. at 1002. Second, the referenced liens encumbering Respondent Pahlavi's residence were created with the knowledge of not only Respondent Pahlavi but also his attorneys. J.A. at 949-50, 973, 989, 991. Finally, Ansari denies that he ever sought to intimidate Respondent Pahlavi. Rather, he merely pointed out that because of the parties' dangerous and covert political operation to overthrow the Islamic Republic of Iran, involving the lives of hundreds, it

would be preferable to resolve their differences in private, such as through a binding arbitration.

2. The Respondents state that

> When this conflict boiled over into litigation in the Circuit Court of Fairfax County, Virginia, Ansari escalated his tactics into a bitter, running warfare that embroiled the parties in three years of grueling litigation, amassing a record of 20 hearings before the Circuit Court of fairfax County, Virginia, and 29 hearings before the Commissioner appointed to take Ansari's accounting. The transcriptsof these hearing exceed 6,500 pages.

Brief in Opposition at 5.

The Respondents imply that Ansari was responsible for the aggressive litigation tactics and numerous court hearings. On the contrary, the Respondents were responsible for this strategy. They issued numerous subpoenae and discovery requests, and then filed numerous discovery motions in order to hold Ansari responsible for failure to comply with such requests, when they knew that it was impossible for Ansari to comply, because (a) Respondent Pahlavi had instituted criminal proceedings against Ansari in Switzerland, thereby preventing Ansari from obtaining account records frozen by the Swiss, J.A. at 356-57 (Commissioner in Chancery's Fourth Report, stating that it was not Ansari's fault that pertinent records could not be furnished), J.A. at 493 (Commissioner in Chancery's finding that "[Respondent Pahlavi's] actions made it

difficult, to say the least, for Mr. Ansari to obtain and furnish copies of the records relating to those [Swiss] accounts."); (b) the secretive nature of the parties' political operation necessitated that Respondent Pahlavi's's assets be spread around the world, as the Islamic Republic of Iran had issued a death warrant for Respondent Pahlavi and resolved to seize his assets, J.A. at 733-34, 740; and (c) Respondent Pahlavi had instructed Ansari to destroy records because of the security risks of keeping them. J. A. at 321, 338, 523.

3. Respondents state that

> Ansari completely fails to show how he accounted for the funds entrusted to him, or how he was denied an opportunity to do so. Ansari's defalcation was plainly made out and the judgement is dischargeable.

Brief in Opposition at 11.

Ansari was denied an opportunity to account for at least five reasons. First, there could not be a meaningful accounting before the Commissioner in Chancery, because the Fairfax Court had already ordered that all of Respondents'' allegations were true and all of Ansari's defenses were stricken. Second, as set forth above, the Commissioner in Chancery found that it was not Ansari's fault, but rather Respondent Pahlavi's actions, that pertinent records could not be furnished. Third, notwithstanding that it was Respondent Pahlavi's actions that made it difficult for Ansari to account, Ansari was the party who was prejudiced:

> [N]o credit can be given for a substantial amount which probably was appropriately disbursed because proof is not available.

J.A. at 491 (Report of Commissioner in Chancery) . Fourth. the parties' covert political operation necessitated the minimizing of written records.

Finally, the accounting was defective. The Commissioner in Chancery was to conduct an accounting for the parties' transactions between 1981 and 1989. With respect to 1981 the Commissioner in Chancery

> prepared an accounting. . . . . showing all receipts and disbursements and showing exactly what was on hand at the end of that year.

J.A. at 493. Eventually, the Commissioner in Chancery "was able to name nearly all of the recipients of the funds disbursed." J.A. at 494, and he concluded "that there was no unauthorized diversion of funds in 1981 and no damages were suffered by Pahlavi at that time." Id. However, the Commissioner in Chancery did not conduct such a detailed accounting with respect to 1982 through 1989, stating that "Time will not permit making similar use of the material relating to all the subsequent years." Id. Without carefully accounting for funds in 1982 through 1989, the Commissioner in Chancery found anyway, and the Fairfax Court affirmed, that Ansari had made unauthorized disbursements of funds belonging to Respondent Pahlavi.

4. Similarly, Ansari had no meaningful opportunity to defend himself at the Punitives hearing. The only issue at the Punitives hearing was whether Ansari acted with "misconduct or actual malice or such recklessness or negligence as to evince a conscious disregard of the rights of others." But in light of the default judgement, all of the Respondents' allegations were assumed to be true, and therefore Ansari could not credibly testify that he had not done what he was accused of. When one is innocent, he

cannot credibly say that he is guilty but not malicious. As a result of the default judgment, the finding of the requisite bad state of mind was inherently a foregone conclusion.

5. Notwithstanding the Respondents' repeated and dramatic disparagements of Ansari's character and mischaracterizations of this litigation's history, Ansari merely wants his day in court on the merits of the allegations that have been made against him. If true, the facts alleged against Ansari are heinous. However, the facts are false, and a gross miscarriage of justice will result if he is not permitted to defend himself on the merits.

Conclusion

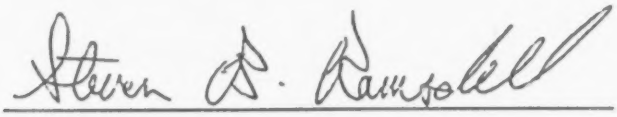
The numerous factual inaccuracies set out in the Respondents' Brief in Opposition demonstrate the extreme prejudice to Ansari of having this judgment declared nondischargeable on the ground of collateral estoppel, where that underlying judgment was a default judgment. The Respondents' failure to properly support various of their factual assertions demonstrates that the factual background of this case is ambiguous and was never finally determined, and further demonstrates that there was no "actual litigation" on issues pertinent to the later dischargeability proceeding in the bankruptcy court. In the face of the huge amount in controversy, the factual disputes suggest, and due process demands, that this petition be granted so that Ansari can seek to obtain a remand to the bankruptcy court for a trial on the merits where the parties' dispute can be adjudicated after both sides have had a full and fair opportunity to present their positions.

The Commissioner in Chancery made a detailed accounting for only 1981, which resulted in a determination of no liability by Ansari. The accounting for the subsequent years 1982 through 1989 was incomplete, ostensibly because

the Commissioner in Chancery lacked the time. J.A. at 494. This subsequent accounting by the Commissioner in Chancery was therefore defective and therefore insufficient to constitute "actual litigation" over issues "essential to" a finding of nondischargeablility.

WHEREFORE, Ansari prays that this Court, upon consideration of Ansari's Petition for Writ of Certiorari and Reply Brief in Opposition, issue a writ of certiorari to review the Opinion and Judgement of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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